
Minutes of the **Special Meeting** of the **Riverdale City Council** held Tuesday, **January 30, 2007** at 6:00 p.m. at the Riverdale Civic Center, 4600 South Weber River Drive.

Members Present: Bruce Burrows, Mayor
David Gibby, Councilor
Stacey Haws, Councilor
Gary Griffiths, Councilor
Doug Peterson, Councilor
Shelly Jenkins, Councilor

Others Present: Larry Hansen, Chief Administrative Officer; Steve Brooks, City Attorney; Lynn Fortie, Business Administrator; Dave Hansen, Police Chief; James Ebert, Police Lieutenant; Doug Illum, Fire Chief; Marilyn Hansen, City Recorder; other city staff and approximately 45 citizens.

A. Welcome & Roll Call

Mayor Burrows called the meeting to order and welcomed all those present. He noted that Councilors Peterson and Haws will be joining the meeting in progress. Councilor Peterson arrived at 6:03 p.m.

B. Presentations and Reports

Police Chief Dave Hansen, introduced Benjamin Jensen as a new Riverdale Police Officer. Officer Benjamin was sworn in by City Recorder, Marilyn Hansen.

Councilor Haws arrived at 6:06 pm.

C. Consent Items

1. Consideration of setting a public hearing for February 20, 2007 for the Unity property exchange/abandonment of easement.

Motion: Councilor Gibby moved to set a public hearing for February 20, 2007 for the Unity property exchange/abandonment of easement. Councilor Peterson seconded the motion.

Councilor Jenkins stated that they didn't receive information regarding where the City is at with this development and that she is not comfortable with setting a public hearing. She noted that the rezone is contingent upon having the Development Agreement in place. Larry Hansen reported that the rezone was contingent on items in the Developer's Agreement and that they have completed a traffic impact study, a wetland study, and that the developer will construct the bridge as soon as possible. He stated that the public hearing deals with property around the old canal area and the easement on the canal. Mayor Burrows noted that the public hearing is for the exchange of property only and abandoning the easement. Councilor Jenkins asked if we are trading the abandonment of the easement for the 23 acres. She stated that it is not a gift, but a trade. Mr. Hansen reported that the exchange is for 1.8 acres that the City owns and the abandonment of an easement associated with the old abandoned canal for approximately 2 acres which would be immediately adjacent to the City's

south border. The 25 +- acres that will be donated to the City would follow with the completion of the Developer's Agreement. Councilor Jenkins inquired if they could get information on the exchange/abandonment prior to the public hearing. Mr. Hansen replied that they could. Councilor Haws stated that, in his view, he is not sure that part of the issue with the easement was making it a bargaining chip in getting the Developers Agreement done and doesn't see how making the exchange without the Developer's Agreement in place would be advantageous to the City.

Call the Question

Roll Call Vote: Councilor Peterson, Yes; Councilor Griffiths, Yes; Councilor Gibby, Yes; Councilor Haws, No; Councilor Jenkins, No. The motion passed with three in favor and two opposed.

D. Action Items

1. Consideration of Resolution 3-2007 authorizing the Mayor to execute RAMP funding grant applications.

Mayor Burrows reported that there are three separate applications for RAMP funding to be used to build a public restroom at the north trailhead, build a public restroom at the Kayak park and build a tunnel under Parker Drive to connect the existing Riverdale trail system to the proposed Ogden trail system.

Motion: Councilor Gibby moved to adopt Resolution 3-2007 authorizing the Mayor to execute RAMP funding grant applications for Parks and Arts & Museums Projects. Councilor Peterson seconded the motion.

Councilor Haws stated that in one of the Strategic Planning sessions they had discussed possible RAMP grant applications for different projects and doesn't recall if the Council came to consensus that these are the ones we wanted to apply for. He suggested putting a process in place wherein the Council actually does go through the projects prior to making grant request in the future.

Call the Question

Roll Call Vote: Councilor Griffiths, Yes; Councilor Gibby, Yes; Councilor Haws, Yes; Councilor Jenkins, Yes; Councilor Peterson, Yes. The motion passed unanimously.

2. a. Consideration of Business License Revocation hearing for Riverdale Dinner and Bingo.

Mayor Burrows outlined the process that the hearing will follow based on the Procedures for Conducting a Public Meeting on Proposed Business License Revocation that was approved at the January 16, 2007 City Council meeting. He noted that the intent is to keep this hearing open to the public, but that there is within the law, the provision that there can be closed deliberations since the City is being sued. Mayor Burrows cautioned all parties who will give testimony, to make truthful statements even though they are not being sworn in. He reminded everyone that the Mayor and Councilmembers are not lawyers and that the Mayor will have final approval on admissibility. Mayor Burrows reported that he will call a recess at 7:30 p.m. and excuse himself as he is leaving town and Mayor Pro-tem Gibby will preside during the remainder of the hearing. He asked those who will participate to be brief and to the point, not repeating points that others have made. He stated that once the hearing is closed it will not be reopened unless necessary and would require a majority vote of the Council.

City Attorney Steve Brooks presented the Historical Presentation by Staff. He stated that Riverdale Dinner and Bingo requested their initial business license on April 9, 2001, and has renewed every year up to and including 2007. In late November he was approached by Police Chief Hansen and Officer Ebert from the Riverdale Police Department concerning some alleged criminal violations under Utah state code at Riverdale Bingo and Dinner. Mr. Brooks reported that after the discussion with Chief Hansen and Officer Ebert, he felt justified that the City Council should review whether or not to revoke their business license. In early November, Mr. Brooks wrote a letter to City Administrator, Larry Hansen, requesting that this item be placed on City Council agenda for review and to schedule a business license revocation hearing which was set for January 30, 2007. Mr. Brooks indicated that he has been in contact with both counsels regarding this issue. He introduced Elizabeth Dunning and Britney Nelson, counsel for the opposition and Mike Junk, counsel for the proponent.

Mayor Burrows stated that he has tentatively set an ending time of 11:00 p.m. tonight, and if more time is necessary, additional dates can be set. He explained that the main thing is to arrive at the correct decision.

OPENING STATEMENTS

Mike Junk, counsel for proponent.

Mr. Junk stated that he is representing the City's interest in this matter and that the Riverdale Police Department has brought this forward to make a decision. He is asking that Riverdale Dinner and Bingo's business license be revoked as per Ordinance 3-1-12 Suspension, Revocation or Refusal to Renew sections 5, 6 and 7. He stated that the City's position is that the underlying business conducted at the Riverdale Dinner and Bingo is gambling and is illegal. Mr. Junk read Article 6, Section 27 from Utah law and state statute 76-10-1101 which outlines and defines gambling. He stated that the definition of gambling is risking something of value, or return of value, when the outcome is based on an element of chance.

Mr. Junk stated that the Riverdale Police Department felt that gambling was going on at Riverdale Dinner and Bingo based on a long term investigation. The Riverdale Police Department sent several individuals into the establishment to see how business was conducted. After reviewing their activities they concluded that gambling was taking place. He stated that he will call four witnesses and although some of the testimony may seem repetitive, it is important to see that individuals had the same type of experience. The witnesses will be: Roger Spiegel, retired state investigator; Steve Reeves, lead detective for Ogden City; Cindy LeFevre, Riverdale City employee; and Riverdale Police Lieutenant, James Ebert.

Mr. Junk stated that he will outline two different types of bingo that are played at Riverdale Dinner and Bingo. There is a regular bingo session, which is more of a traditional bingo where numbers are called and cards are marked. Then there is a computerized bingo where individuals go to a computer touch screen and can play 1 to 9 bingo cards at a time. He stated that during the regular bingo session, individuals are purchasing dinners with varying degrees of prices from \$16, \$26 and \$41 per dinner. He noted that they also offer specials which can be purchased by buying drinks, ice cream, candy or other items. In order to play the computer bingo, individuals buy phone minutes or internet time and then receive so many bingo plays on the computerized bingo based on the amount of internet or phone time that was purchased.

Mr. Junk explained that this case comes down to definitions. Mr. Diana, the owner, will explain that bingo is free and that individuals come into his business and may buy a dinner, or buy phone minutes or internet time, but that all bingo cards are offered for free. That bingo is just something offered as entertainment. Mr. Junk stated that there is a 1979 Utah case, *Albertson vs Hansen*, which went to the Utah Supreme Court. *Albertsons* was offering bingo cards when individuals purchased groceries. The case came down to saying you have to give “consideration” in order for it to be gambling. Our position is that there is consideration given, in this particular case, from the individual who goes into the Riverdale Dinner and Bingo for gambling. When people pay for a dinner, phone minutes, or internet time, all of these things are consideration and they get a corresponding bingo card or opportunity to win money, and people do win money. The real dispute will be whether people give consideration to play bingo at their establishment. We believe that buying dinner, internet time, phone minutes or giving cash, increases the number of bingo cards received, or increases the odds to win money, is giving consideration. Our position is that they cannot hide behind selling an over priced dinner and receiving donated money or by saying purchasing phone minutes or internet time and going to play computerized bingo and winning money isn’t gambling. This is gambling. Another concern with individuals going into this particular establishment is whether or not they are protected from dishonest gaming. There is the question as to who controls the odds and what the odds are on the computerized bingo as there is no regulation. If you go to Las Vegas, there is a gambling commission that determines when people go in to play slot machines that the business are limited by the odds or amount of return that has to at least be paid out. In this case, we don’t have regulation and don’t have the ability to protect individuals who use these devices. We will be asking the Council, based on evidence, to revoke the license.

Elizabeth Dunning, Counsel for the opponent.

Ms. Dunning stated that they have been told that Riverdale Dinner and Bingo has held a business license to operate a social club in Riverdale City since 2001. As you can tell from it’s name, it has never tried to hide that bingo was played there and bingo is legal under the laws of the State of Utah under the *Albertson’s* case provided that there is no charge to play. The Utah Supreme Court has interpreted the constitutional provision and the statute and said it is gambling if you pay consideration for a chance to win something of value. If you take away any one of those elements, it is not gambling under the law in Utah. Riverdale Dinner and Bingo is not in violation as it does not charge for bingo or for the computerized game called Magic Ball which is a sweepstakes game. Tonight you will hear testimony that people can and do come into Riverdale Dinner and Bingo and say they don’t want to buy any dinner, drinks, or snacks and just want to play bingo. They are given bingo cards for free that have an equal chance to win as people who get bingo cards for free with their dinners. Ms. Dunning gave the history of the relationship between Riverdale Dinner and Bingo and Riverdale City. She stated that prior to signing the lease on the premises and applying for business license, Frank Diana and Don Adamson, Sr., who owned the building, met with Randy Daily, the then Mayor, and the then City Attorney. They told them their plan and that they are considering a long term lease. The Conditional Permit was applied for and a business license was applied for and granted. In the years between 2001 and now, Frank Diana and Don Adamson, Sr. met informally, at regular intervals with the City Attorney and Randy Daily, and were never told about any complaints about Riverdale Dinner and Bingo. As far as they knew, there were no problems or concerns about gambling. There was a period of time when social clubs were allowed to permit indoor smoking. Riverdale Dinner and Bingo was told in 2002, that in order to allow smoking inside the building, it had to be a separate building. The landlord and Mr. Diana were told they would have to build another wall to make it a separate building in order to permit indoor

smoking. They undertook to do that because Randy Daily expressed that concern and it cost \$30,000 to build the wall. Ms. Dunning stated that she spoke to John Geilmann, former Riverdale City Attorney and he has said that he will appear if given additional time.

In December of this year, Frank Diana was called to a meeting with the Riverdale City Chief of Police who told him that he was revoking the Riverdale Dinner and Bingo business license because of gambling. Mr. Diana tried to find out what the club was doing that was gambling and what had changed about an operation that was going on for the last five years. He could not get anything identified. Mr. Adamson, Jr. who is also here and will be a witness, will testify to the same experience. He also tried to find out what is being done differently or is troublesome now, so that they can try to fix it and come to a resolution. The company also has a dinner and bingo club in Salt Lake County which has operated the same way for twenty years and is not considered to be in violation of any Salt Lake County or state law.

Ms. Dunning stated that we now have a situation where Blue Sky Entertainment, which owns Riverdale Dinner and Bingo, and Mr. Adamson's company has invested close to \$200,000 into the building where Riverdale Dinner and Bingo is located. Blue Sky has invested \$150,000 in furniture fixtures, and new bathroom. They have a long term lease to 2014 and the rent is \$5,000 per month. There is an enormous investment and long term relationship, with a five year history of abundant contact with officials of Riverdale City and you are being told tonight by Mr. Junk that in spite of all that, we now have a different view of what you have been doing that has never been communicated to you so that you can find some resolution. Contrary to what Mr. Junk has told you, there is not a basis to revoke this license. Ms. Dunning stated that you probably eat at McDonald's and played their Monopoly game where the more you bought, the more monopoly pieces you were given. That fact alone, which Mr. Junk is suggesting turns a legitimate activity into gambling, can't possible be the basis for a revocation or this Council will need to say that many common kinds of sweepstakes are unlawful. One of the things you see in all sweepstakes and in Riverdale Dinner and Bingo has to be a way to enter to play the game without paying consideration or without buying anything. You could ask McDonald's for a free game piece and you would not have to buy anything. In the same way, if you want to play Magic Ball sweepstakes, you can write in and get a free game from Riverdale Dinner and Bingo. At the end of testimony, whether tonight or not, and if we have time to hear from Mr. Geilmann, we will ask you to deny this request to revoke Riverdale Dinner and Bingo's business license.

Mayor Burrows stated that we did receive a potential list of witnesses from proponent and asked Ms. Dunning if she had a list of witnesses she planned to call.

Ms. Dunning stated that she would call Frank Diana, one of the owners; Carolyn Harmon, manager of Riverdale Dinner and Bingo; Don Adamson, Jr., current property owner; and John Geilmann, who is not available tonight.

PRESENTATION/TESTIMONY BY PROPONENT

Mr. Junk called Ms. Cindi LeFevre as a witness. Ms. LeFevre works for the Riverdale Police Department and testified that she went into Riverdale Dinner and Bingo at the request of the Riverdale City Police Department. Ms. Lefevre testified as to her experience playing Magic Ball at Riverdale Dinner and Bingo.

The meeting broke for recess at 7:20 p.m.
Mayor Burrows left the meeting at 7:20 p.m.

The meeting re-convened at 7:28 p.m.

Ms. Dunning cross examined Ms. LeFevre. Ms. Dunning asked Mr. Junk if he had copies of the receipt from Riverdale Dinner and Bingo that Ms. LeFevre was given when she played Magic Ball. Mr. Junk presented the receipt and it was marked Exhibit #1. Ms. Dunning presented Exhibit #2, which is a copy of the front and back of the membership application. Ms. Dunning presented Exhibit #3, the membership card filled out by Ms. LeFevre. Ms. Dunning presented Exhibit #4, pictures of signs in Riverdale Dinner and Bingo stating that there is no purchase necessary to play Magic Ball or Bingo.

The City Council questioned Ms. LeFevre.

Mr. Junk called Mr. Roger Spiegel as a witness. Mr. Spiegel is currently employed as a UTA policeman. Prior to that he was employed by the Utah Highway Patrol for 24 ½ years. Mr. Spiegel stated that he was in investigations for the last six years, which included investigating two bingo establishments. Mr. Spiegel testified that when the Riverdale City Police Department began their investigation they contacted the State, who recommended that they contact him for help. Mr. Spiegel testified that he went into Riverdale Dinner and Bingo on April 27, 2006 and May 4, 2006 while conducting his investigation for the Riverdale City Police Department. Mr. Spiegel purchased the \$26 dinner and played regular bingo on April 27, 2006. Mr. Junk presented Exhibit #5 which shows the different types of bingo games for the evening. Mr. Spiegel also testified that he purchased snacks to participate in the special bingo games. Mr. Spiegel testified that he played Magic Ball when he returned to Riverdale Dinner and Bingo on May 4, 2006 and gave an account of his experience.

Ms. Dunning cross examined Mr. Spiegel. Ms. Dunning presented Exhibit #6, a pad of bingo cards that are used to play regular bingo. Mr. Spiegel testified that they looked like the type of cards he was given.

The meeting recessed at 9:10 p.m.

The meeting re-convened at 9:20 p.m.

The City Council questioned Mr. Spiegel

Mr. Junk called Steve Reaves as a witness. For the last thirteen years, Mr. Reaves has worked for the Ogden City Police Department, with the last eight years in the Major Crimes Division. Mr. Reaves testified that Riverdale City Police Department asked him to go into Riverdale Dinner and Bingo to help with their investigation. Mr. Reaves gave an account of his experience playing Magic Ball and the regular bingo session. Mr. Reaves testified that he purchased the \$41.00 dinner and had his bingo cards loaded into a handheld machine. Mr. Reaves also testified that he purchased snacks to play the special bingo games.

Ms. Dunning cross examined Mr. Reaves. Ms. Dunning presented Exhibit #7, membership application of Mr. Reaves. Mr. Reaves testified that he has went to Riverdale Dinner and Bingo prior to working on the investigation and that he plays bingo in Wendover.

The City Council questioned Mr. Reaves

Mayor Pro-tem Gibby stated that he would entertain a motion to adjourn and reconvene at a later date and admonished the members of the Council and witnesses that they are prohibited from discussing this case between sessions. Councilor Haws stated that Mr. Reeves made a comment about having his personal information made available to the public. Mr. Brooks explained that personal information can be blacked out and that the Council has the discretion to do that. Mayor Pro-Tem Gibby stated that personal information will be stricken on the official record.

Motion: Councilor Haws moved to adjourn the meeting until tomorrow night (January 31, 2007) at 6:00 p.m. The motion was seconded by Councilor Peterson.

Councilor Haws amended his motion to begin the meeting tomorrow night at 6:30 p.m. Second agreed.

Call the Question:

The motion passed unanimously

D. Adjournment

With no further business to come before the Council at this time, Councilor Peterson moved to adjourn the meeting. Councilor Haws seconded the motion. The motion passed unanimously. The meeting adjourned at approximately 10:57 p.m.

Attest:

Approved: February 20, 2007

Marilyn Hansen, City Recorder

Bruce Burrows, Mayor