



**RIVERDALE CITY COUNCIL AGENDA
CIVIC CENTER - 4600 S. WEBER RIVER DR.
TUESDAY –NOVEMBER 19, 2013**

Minutes of the **Regular Meeting** of the **Riverdale City Council** held Tuesday, **November 19, 2013** at 6:03 PM at the Riverdale Civic Center, 4600 South Weber River Drive.

Members Present: Bruce Burrows, Mayor
Michael Staten, Councilor
Norm Searle, Councilor
Alan Arnold, Councilor
Braden Mitchell, Councilor
Don Hunt, Councilor

Others Present: Larry Hansen, City Administrator; Steve Brooks, City Attorney; Michael Eggett, Community Development Director; Dave Hansen, Police Chief; Ember Herrick, City Recorder and 34 members of the public including Kevin Higgs, Gary E. Griffiths, Marian Griffiths, Lisa Baskin, Marc Saal; Julie Burch, Doug Burch, Steve Hilton, Katie Hilton, Laura Hilton, Lori Fleming, Travis Woodard, Nik Perkins, Jarod Moss, Ryker Hemmers, Hayden Woodard, Cody Hansen, Lynn Stephens, Tamron Larson, Dan Drainey, Jennifer Morrell, Amy Ann Spiers, Brian Durbane, David Gailey, Brent Ellis, Tamra Ellis, Forrest, Calvin Hall, Nik Perkins, Kelly Keiter, Stacey Haws, Laina C. Plum, Roxanne Call, Justin Grass, and Taten Maisey

A. Welcome & Roll Call

Mayor Burrows called the meeting to order and welcomed all in attendance including all Council members and several boy scouts. Ryan Richards introduced Troop 35 including leaders Lynn Stevens and Calvin Hall and troop members Justin Grass, Taten Maisey who are working on their Citizenship in the Community merit badge. Nik Perkins introduced Troop 266 including Hayden Woodard, Jarod Moss, Ryker Hemmers, Zach Henstra and leaders Travis Woodward and Braden Mitchell.

B. Pledge of Allegiance

Councilor Hunt led the Pledge of Allegiance.

C. Moment of Silence

Mayor Burrows read a proclamation of Thanksgiving from New Hampshire Politician John Lagdon in 1785.

D. Open Communications

Mayor Burrows invited any member of the public with questions or concerns to address the Council and he asked those individuals who would like to comment about the election canvass to reserve their comments until an opportunity is provided for them later in the meeting when this action item is being discussed. There were no open communications at this time.

E. Presentations and Reports

City Administrator Larry Hansen referenced the treasury report and noted that the only update to the Community Development Status Report is the opening of Firehouse Subs. Mr. Hansen and Mayor Burrows recognized Wes Kay on his five year anniversary of employment with Riverdale City and thanked him for the excellent job he does for the public works department maintaining buildings throughout the city. Mr. Hansen noted the city is operating within staffing authorization.

F. Consent Items

Mayor Burrows asked if there were any changes to the November 6, 2013 work session and regular Council meeting minutes and none were noted.

Motion: Councilor Hunt moved to approve the consent items as amended.
Councilor Arnold seconded the motion.

Mayor Burrows asked for discussion on the motion and there was none.

Call the Question: The motion passed unanimously.

G. Action Items

1. Consideration of Resolution 2013-38 amending Riverdale's Consolidated Fee Schedule building inspection fees for solar panel installation

Community Development Director Mike Eggett said Kevin Higgs approached the Council on November 5, 2013 requesting Riverdale City consider amending its consolidated fee schedule to reduce the building inspection fees for residential solar panel installation. Mr. Eggett said Building Inspector Jeff Woody surveyed 10 cities to see what fees they charge and that information was included in the packet for Council consideration with the recommendation that the fee schedule be amended to \$40 an hour for residential solar panel installation. He said the proposed fees will cover the cost of the building inspector's time and travel. Mr. Eggett said commercial solar panel inspections are more technical and will therefore continue to be based on valuation in Riverdale City. He said commercial inspections may also require outside consultation depending on the complexity of the project and he asked for any questions.

Councilor Mitchell asked if an outside evaluation would be typical for residential projects and Mr. Eggett said no but he will verify that the contractor doing the installation is properly licensed with the State of Utah. Councilor Searle said the federal government and State of Utah both offer tax credits to incentivize people to invest in solar energy and he said Riverdale City should also encourage these types of projects by keeping inspection fees low. He said he supports amending the fee schedule as proposed.

Councilor Hunt asked how residents will be billed and if an estimated payment will be expected in advance and Mr. Eggett said the building inspector will keep track of his hours and bill the resident after the work has been completed. Councilor Searle said he expects to see an increase in residents investing in solar power in the future and Mr. Eggett said the city has already received a second request in the last two weeks from another resident that wants to install solar panels on his home.

Motion: Councilor Arnold moved to approve Resolution 2013-38 amending Riverdale's Consolidated Fee Schedule building inspection fees for solar panel installation. Councilor Hunt seconded the motion.

Roll Call Vote: Councilor Arnold, aye; Councilor Mitchell, aye; Councilor Staten, aye; Councilor Hunt, aye; and Councilor Searle, aye. The motion passed unanimously.

2. Consideration of Ordinance 845 proposes amending Riverdale's Alcohol Licensing Procedure so that a "Schedule A" form is only required for business owners and managers but not for each individual employee who sells or serves alcohol to the public

City Attorney Steve Brooks said Ordinance 845 proposes requiring a Schedule A form and police check for business owners and managers of stores that sell or serve alcohol removing the requirements that all employees must also complete the form. Police Chief Dave Hansen said in 1985 when this ordinance was adopted Riverdale City only had a few small convenience stores that sold alcohol but now the city has 17 establishments that sell or serve and the managers of some of Riverdale's big box stores like Wal-Mart and Target have complained this requirement is burdensome when they are already complying with state liquor training laws. According to Chief Hansen requiring a Schedule A form only from management and owners in no way changes law enforcement's ability to enforce state alcohol laws or work with the health department to conduct police stings to see if employees are selling to minors. He said the proposed amendment will not hinder enforcement but will make the licensing renewal process easier for businesses and city staff from an administrative perspective. Mr. Brooks said the amendment was created in response to feedback from Riverdale's business community as communicated to Riverdale's City Recorder who handles the city's business licensing.

Motion: Councilor Arnold moved to approve Ordinance 845 proposes amending Riverdale's Alcohol Licensing Procedure so that a "Schedule A" form is only required for business owners and managers but not for each individual employee who sells or serves alcohol to the public. Councilor Mitchell seconded the motion.

Roll Call Vote: Councilor Mitchell, aye; Councilor Staten, aye; Councilor Hunt, aye; Councilor Searle, aye; and Councilor Arnold, aye. The motion passed unanimously.

3. Consideration of Resolution 2013-37 canvassing, accepting and approving the results of the Municipal General Election held on November 5, 2013

Riverdale City Recorder Ember Herrick said the good news from the election canvass is that Riverdale City experienced a record high voter turnout using vote by mail in 2013 with nearly half of all registered voters participating in the election process. She said voter turnout was nearly 48% and she referenced a report from Weber County Elections Director Jennifer Morrell explaining 44 ballots that were returned but could not be counted for various reasons. This report is also available to the public on Riverdale City's Elections page on the city website and the bulletin board of the Civic Center. Ms. Herrick asked for any questions regarding the canvass or any of the uncounted votes and there were none.

Ms. Herrick explained the disqualification of Council candidate Gary E. Griffiths from the election canvass results by reading the letter sent to him:

Gary E. Griffiths
5352 S. 1345 W.
Riverdale, UT 84405

November 18, 2013

Mr. Gary E. Griffiths,

Under Utah State Code 20A-1-402 as Riverdale's Election Officer I have the responsibility of rendering interpretations and making decisions for Municipal Elections "The election officer shall render all interpretations and make all initial decisions about controversies or other matters arising under this chapter."

Since October 30, 2013 I have received numerous complaints from the public and three formal written complaints from Riverdale Municipal Candidates challenging Riverdale City's decision to allow you to remain on the ballot because you and the other five candidates all agreed to abide by 5 p.m. October 28, 2013 campaign filing deadline. It is my obligation as the city's election official to certify that the proceedings were done in accordance with law and based upon the affidavit that you signed I am not comfortable certifying you as a winning candidate in this election.

After conferring with Riverdale City Attorney Steve Brooks and Justin Lee Deputy Director of Elections for the Lieutenant Governor's Office I have determined that the city retains the ability to set the date for financial disclosure and that my interpretation of seven days before was not incorrect, therefore you are disqualified from the 2013 election. I will submit the canvass report to Riverdale's City Council tomorrow night November 19, 2013 at 6 p.m. for their consideration nominating Brent Ellis and Steve Hilton as the winning Council candidates, you are welcome to attend and address the Mayor and Council during open communications.

Please refer to Utah State Code 20A-4-403(6) for your rights concerning appealing decisions made by Municipal Election Officials.

Please feel free to contact me if you need assistance or have any questions.

Sincerely,

Ember Herrick
City Recorder

Ms. Herrick said this is an unfortunate situation for both Gary Griffiths and Steve Hilton. She said as Riverdale's Election's Officer she is obligated to enforce Utah Code 10-3-208(7)(a) which reads: "If a candidate fails to file a campaign finance statement before

the deadline specified “no later than seven days before the date of the municipal general election” the municipal clerk or recorder shall...if practical remove the candidate’s name from the ballot by blacking out the candidate’s name before the ballots are delivered to voters; or if removing the candidate’s name from the ballot is not practical, inform the voters by any practicable method that the candidate has been disqualified and that votes cast for the candidate will not be counted; and may not count any votes for that candidate.” Ms. Herrick invited Mr. Brooks to add his perspective or correct anything he deemed needing clarification during her explanation. She explained that on October 29, 2013 she and Mr. Brooks spoke with Deputy Director of Elections Justin Lee from the Lieutenant Governor’s Office on a conference call about disqualifying Mr. Griffiths for missing the October 28, 2013 financial disclosure filing deadline. According to Ms. Herrick, on that call she and Mr. Brooks explained how the city arrived at the October 28, 2013 deadline and Mr. Lee said the Lieutenant Governor’s Office set the deadline for Political Action Committees to submit their financial disclosures as October 29, 2013. Ms. Herrick said Mr. Lee told her and Mr. Brooks that the Lieutenant Governor’s Office does not disqualify candidates in municipal elections; it is the purview of the municipality. She said Mr. Brooks spoke with Mr. Lee again on November 18, 2013 before she send the letter disqualifying Mr. Griffiths. According to Ms. Herrick, Mr. Brooks said he asked Mr. Lee explicitly if the Lieutenant Governor’s office would present a legal challenge to Riverdale City for enforcing their interpretation of seven days for the General Election as October 28, 2013 and he was told their office would not. Ms. Herrick said she has carefully reviewed the Lieutenant Governor’s Code and Election Law and the statutory provision that requires disqualification of the candidate and strict compliance with all filing deadlines for financial disclosure reports is very clear. She said as Riverdale’s Election Officer she felt compelled to enforce state statute by disqualifying Mr. Griffiths and did not feel that she had legal grounds to make any other determination.

Ms. Herrick said she had requests from candidates eager to run for office in January 2013 and so she updated Riverdale’s Election Guide with all the forms the candidates were required to complete that same month. She said she set the seven day campaign filing deadline based on her understanding of state law which reads “no later than seven days before the date of the municipal general election”. Ms. Herrick said she attempted to verify the October 28, 2013 filing deadline by visiting the Lieutenant Governor’s website which only quoted the seven day language from the code. Ms. Herrick said nowhere on the Lieutenant Governor’s website or Weber County’s Elections website does it state that the deadline for 2013 is considered to be October 29, 2013. She said that as Riverdale’s City Recorder she is a member of the Utah Municipal Clerks Association (UMCA) which creates an eight page election calendar with tasks and the dates they are due designed to assist election officers in complying with state law. Ms. Herrick said when she printed the calendar in January 2013 the UMCA also recognized October 28, 2013 as the financial disclosure deadline of seven days before the date of the Municipal General Election and so that was the date she set for Riverdale. She explained that when candidates file for office in June 2013 they are required to sign in her presence an official acknowledgement of candidate requirements and due dates for financial disclosure statements where they agree that failure to file reports by the dates listed will lead to their disqualification.

Mr. Brooks said in his opinion the state election code is vague and things that you expect to be clearly spelled out aren't and he said this happens with Riverdale City's code too and often it isn't until controversies arise that issues get clarified. He said at least two times in the code the language states that disclosures are due "no less than seven days" and he said after Mr. Griffiths missed the October 28, 2013 deadline and he and Ms. Herrick contacted the Lt. Governor's Office they learned for the first time the state recognized October 29, 2013 as the deadline. Mr. Brooks said the 29th is within seven days but not before seven days and he said in his opinion the 29th deadline is not strictly consistent with Utah Code 20A-1-401 that clearly outlines how time deadlines should be computed. He said most of this section addresses how to calculate around holidays and weekends but Section 3(a) reads "when computing any number of days before or after a specified date or event under this title, the specified date or day of the event is not included in the count." Mr. Brooks said that means Election Day November 5, 2013 should not be included in the count. He said another section of the code requires the deadline be 5 p.m. no later than seven days before the date of the municipal general election. Mr. Brooks said Elections always fall on Tuesdays so if the legislative intent was that financial disclosures be filed by 5 p.m. on the Tuesday before the General Election that is how the code should read to avoid any confusion. He counted back from November 4, 2013 seven full days and he said the literal translation of seven days before would require the deadline fall on October 28, 2013, which is the date Riverdale City set. Mr. Brooks said financial disclosures received by the Lt. Governor's deadline of October 29, 2013 would have been received six days and so many hours before General Election Day, within the seven day period, but not before the seven day period as the law clearly seems to require. Mr. Brooks said the Lt. Governor's Office disagrees with how Ms. Herrick calculated the financial disclosure deadline date but he said he believes she correctly interpreted the date based on a literal translation of the law.

Mr. Brooks said the statute is also clear that when a controversy arises the determination should be made by the election officer in municipal elections and he said legally he agrees with Ms. Herrick's decision to disqualify Mr. Griffiths. He said the duties of the Board of Canvass are vague under the code outside of their duty to "count the votes" but he said no statute in the code removes the power of the Council as the Board of Canvass to override Ms. Herrick's decision. Mr. Brooks said his duty is to advise the Council on how to avoid a lawsuit and he said ultimately he would be remiss if he did not advise the Council that they have the ultimate authority to certify the canvass results either disqualifying or reinstating Mr. Griffiths as a winning candidate in the 2013 municipal election.

Mayor Burrows asked Mr. Brooks to explain why he advised Ms. Herrick to hold off disqualifying Mr. Griffiths until after the canvass results were in and Mr. Brooks said he was in a difficult position because Riverdale Resident Stacey Haws and Mayoral Candidate Alan Arnold had accused the city of nepotism and the immediate disqualification of Mr. Griffiths would have been interpreted by some as an attempt to affect the outcome of the race and give an advantage to the City Administrator's son Cody Hansen in a close race. Mr. Brooks said because of the controversy he felt unable to consult with Mayor Burrows or Mr. Hansen and he said he was trying to act in the best interest of the city and so he felt the safest course was to defer to the Lt. Governor's Office. According to Ms. Herrick, Mr. Lee told her election law empowers municipal

election officer not the Lt. Governor's Office to disqualify candidates in municipal elections. Ms. Herrick said Mr. Brooks' role as the city's attorney is to avoid litigation but her responsibility as the city's election officer is to follow state election law which clearly states her obligation to disqualify a candidate for missing a financial disclosure deadline. She said she took an oath to do that and she can't certify an election when one of the candidates failed to meet the statutory requirements he agreed to in a signed affidavit.

Ms. Herrick said Mr. Brooks has communicated with Mr. Griffiths and she can't speak to what Mr. Brooks told Mr. Griffiths but her determination all along has been that Mr. Griffiths should be disqualified for missing the financial disclosure deadline he agreed to because he acknowledged that failure to meet that deadline would lead to his disqualification. She said enforcing the statute is the only way to be fair to the other five candidates who complied with the October 28, 2013 deadline. Mr. Brooks said he spoke on the phone to Mr. Griffiths and in the interest of full disclosure sent an email to all the five candidates explaining Mr. Griffiths' financial disclosure was late and his ability to remain on the ballot was subject to a challenge.

Ms. Herrick asked the Board of Canvass to certify Norm Searle as Mayor and Brent Ellis and Steve Hilton as the two Council candidates who received the highest number of votes after the disqualification of Mr. Griffiths. She said any candidate or member of the public who wishes to challenge the canvass results has the legal right to do so under Utah State Code 20A-4-403(6)(b) and (c)(i) which states that municipal election contests should be filed, tried and determined by the district court of the county in which the municipality is located within seven days after the votes are canvassed. Ms. Herrick said she will defer to the Board's decision as the governing body of Riverdale City and she has confidence that whoever serves on the Council whether Mr. Griffiths or Mr. Hilton will do an excellent job.

Mayor Burrows asked for any questions from the Council to Ms. Herrick before the public is allowed to comment and Councilor Arnold congratulated Mayor-Elect Searle for running a good campaign and winning the election. Mayor Burrows asked that the dialogue from the public remain civilized during the open communications portion of tonight's meeting and he said comments should be condensed to approximately three minutes to give everyone who wants to speak an opportunity to be heard.

Riverdale resident Stacey Haws said he sent a letter with his views that Ms. Herrick copied and distributed to the Mayor and Council prior to tonight's meeting and he said state law requires an election officer to do certain things after disqualifying an election candidate. He said the word "shall" means "must" under the law and he said Ms. Herrick had an obligation to remove the candidate's name from the ballot but as this was not practical because of Riverdale's vote by mail election, she should have informed the voters by any practical method and that candidate has been disqualified and votes cast would not be counted. He said Ms. Herrick did not fulfill this requirement of the law and indicated in a response to a newspaper article that the voters would decide the election. He said Ms. Herrick didn't disqualify Mr. Griffith or follow the law and he asked the Council to consider these facts before making their determination.

Mayor Burrows said Ms. Herrick will have an opportunity to respond after the public comments and he noted that Mr. Haws' letter and a letter from Riverdale resident Gary Boatright Jr. and candidate Steve Hilton were received prior to tonight's meeting but all are lengthy and in the interest of time won't be read aloud during this public meeting but will be posted on the city's website with copies available in the City Recorder's office.

Riverdale resident David Gailey said he thinks the decision to disqualify Mr. Griffiths should have been made before the election to be fair to the other candidates and the citizens of Riverdale who may have changed their votes if Mr. Griffiths' name was not on the ballot. He suggested the city disqualify Mr. Griffiths and hold a new election.

Mayor Burrows said because Riverdale conducted a vote by mail election in 2013 ballots were mailed out on October 8, 2013 three weeks before campaign financial disclosure deadlines were due for municipal candidates in Riverdale on October 28, 2013 and after a large percentage of the ballots had already been returned.

Legal Counsel for Gary Griffiths Lisa Baskin said Mr. Griffiths called her at 6:30 a.m. this morning and she has been working on this through most of the day and would like to offer guidance to the Board of Canvass. She said there are several issues and the first is whether the law is being applied uniformly not just in Riverdale City but across the State of Utah. She said the Board is being asked to make a decision on a mistaken deadline which is not in line with the statutory deadline of October 29, 2013. Ms. Baskin said just before tonight's meeting she received a letter from the Lt. Governor's Office explaining that October 29, 2013 is the date every other jurisdiction they are aware of in the state used in 2013 as the seven day financial disclosure deadline. She offered to distribute copies of the letter and Ms. Herrick said the Mayor and Council were given copies prior to tonight's work session. Ms. Baskin said the financial disclosure deadline was created so voters know who is contributing to election campaigns in a reasonable amount of time which is a week before the General Election. She said a strict interpretation of the deadline as October 28th and not the 29th denies access to the ballot and impairs voters' rights and invalidates votes which are considerable issues. Ms. Baskin said the train has left the station and Mr. Griffiths name was on the ballots mailed out on October 8, 2013 and now the Board has an obligation to count the votes. She said even if the statute is vague as a legislative attorney for seven years in Utah and a former Council member and mayoral candidate in North Salt Lake serving on the executive board of the Utah League of Cities and Towns she is very familiar with the process and a tortured reading of the statute is not necessary to backpedal from a mistake in judgment. She said October 29, 2013 is the correct date and to deny Mr. Griffiths access to the ballot would be an injustice to him and all the people who voted for him and she warned that members of the canvass board could be in a similar situation two years from now. She said there must be strict compliance with the code and under this section the date was October 29th, not the 28th.

Riverdale resident Lynn Stephens said he voted for Gary Griffiths and he said Mr. Griffiths signed what appears to be an official contract with the city. Mr. Stephens said as a general contractor in his line of work he is obligated to abide by the terms of the contracts he signs even if there are mistakes made on it or things you may want to contest later on. Mr. Stephens said it appear Mr. Griffiths signed a contract saying he would have his financial disclosures in by the 28th and in his opinion that is the deadline Mr. Griffiths needs to stand by. Mr. Stephens said he appreciates all the candidates that ran

for office in Riverdale and it was difficult to determine who to vote for because he feels they will all support his rights and do a great job. He said he is thankful to live in Riverdale.

Riverdale resident Dan Draine said the Board of Canvass has the responsibility to make the ultimate determination in this matter taking into consideration that there exists a conflict of administrative rules and policies and he said he is speaking on behalf of the citizens of Riverdale. Mr. Draine said the city voted and majority rules and to use rules to split hairs nullifies the worth of our constitution and the worth of citizens of Riverdale who have voted. He said the buck stops with the Board who have an obligation to support the rights of the citizens. Mr. Draine said Ms. Herrick feels she is doing her duty and he would not fault her, but the Board must support the citizens that they serve.

Riverdale resident Gary Griffiths said there is nothing vague about the law and Riverdale code complies with state law regarding the seven day filing deadline requirement. He said the supporting document from UMCA Ms. Herrick referenced showing the October 28, 2013 deadline is dated material and although she set the dates in January the election checklist has been modified several times since then and it now clearly reflects the deadline of October 29th. Mr. Griffiths said he would like to know the past practice of Riverdale in setting the seven day standard for previous elections. He said Ms. Herrick made an unfortunate error because she was misguided so the contract he signed should be nullified because it doesn't comply with state or city code. Mr. Griffiths asked the Board of Canvass to let the ballot stand.

There were no additional comments from the public.

Mayor Burrows said before the Council deliberates he would like Ms. Herrick to respond to the comments made by the public. Ms. Herrick said she would have been open to amending the financial disclosure deadline of October 28, 2013 if any of the candidates or a member of the public would have challenged the date prior to that date. She said it is not fair to the other candidates who met the deadline all six agreed to abide by if the city retroactively amends the date to October 29, 2013 to accommodate the one candidate who missed the filing deadline and then decided to challenge it. Ms. Herrick said this is her second municipal election so she cannot speak to what Riverdale City has done regarding financial disclosure deadlines in the past, but she said when she researched the 2011 deadline the date Riverdale City used matched the date the UMCA election checklist listed and the date recognized by the Lt. Governor's office. Ms. Herrick said she recognizes her responsibility to verify the election calendar dates and she said that she should have gone back to make sure none of the dates had been changed between January and June. She said she believes the candidates also have a responsibility to challenge any deadline they may not agree with but before not after missing a filing deadline. Ms. Herrick said Ms. Baskin's statement that the 28th deadline is not contested by anyone is not reflective of some of the responses Mr. Brooks has received from other Utah attorneys. She referenced one from David Church a municipal law expert with the Utah League of Cities and Towns who agreed Riverdale's interpretation of the statute is the most logical. Ms. Herrick said she would have conceded had Mr. Griffiths come to her office the morning of October 29, 2013 and asserted he was turning in his disclosure on time according to the Lt. Governor's deadline but she said during that morning meeting Mr. Griffiths admitted he had missed the deadline he agreed to and went so far as to drive down to the Lt. Governor's office to offer to pay a fine to be allowed to

remain on the ballot. Ms. Herrick said she disqualified Mr. Griffiths in order to be fair to all the candidates that agreed to and met the October 28, 2013 deadline. She said Riverdale's vote by mail election made it impossible to take Mr. Griffiths name off the ballot and when she and Mr. Brooks reviewed the law it did not clearly indicate that the Election Official must immediately disqualify the candidate. Ms. Herrick said in hindsight it would have been fairer to Mr. Griffiths, Mr. Hilton, and the voters to immediately disqualify Mr. Griffiths from the election on October 29, 2013 but she waited because she was advised to do so by Mr. Brooks and deferred to his legal counsel. Ms. Herrick said in her letter to Mr. Griffiths she explained she could not certify there were no irregularities and the election was conducted in accordance with all state and city laws without disqualifying him and recommending that the Board of Canvass not count the votes for Mr. Griffiths, with the understanding that the Board certifies the election and will make the final determination. Mayor Burrows asked for any questions for Ms. Herrick and there were none.

Mr. Brooks said he is concerned no one from board has asked him any questions to this point and he said a closed executive session would be appropriate to discuss legal strategy.

Motion: Councilor Arnold moved to adjourn into closed executive session to discuss pending or reasonably imminent litigation pursuant to Utah Code 52-4-205(1)(c). Councilor Searle seconded the motion.

Mayor Burrows asked for discussion on the motion and Councilors Staten and Arnold and Hunt said they all have questions but will defer to after the Executive Session. Councilor Arnold said the discussion will resume shortly and Mayor Burrows encouraged the public to stay.

Roll Call Vote: Councilor Staten, aye; Councilor Hunt, aye; Councilor Searle, aye; Councilor Arnold, aye; and Councilor Mitchell, aye. The motion passed unanimously.

The Council adjourned into closed executive session to discuss legal strategy at 7:14 p.m.

Motion: Councilor Searle moved to adjourn out of closed executive session to discuss pending or reasonably imminent litigation pursuant to Utah Code 52-4-205(1)(c). Councilor Staten seconded the motion.

Call the Question: The motion passed unanimously.

The Council meeting resumed at 7:44 p.m.

Mayor Burrows thanked the public for their patience and Councilor Staten said the question has arisen that the Recorder should not have allowed Weber County to tally the votes for Mr. Griffiths and he said he understood the purpose of the canvass to be for the Board to officially count the votes. Councilor Staten asked Mr. Brooks to clarify what it means to "not count any votes for that candidate" and Mr. Brooks said state code states the purpose of the canvass is to count the votes but he reiterated that the Board of Canvass can disagree with Ms. Herrick's canvass report and overturn the disqualification of Mr. Griffiths. Councilor Staten said the layman's interpretation of counting one, two, three and the definition of counting the votes by the Board of Canvass are not the same

thing and the Board certifies the official vote count although the tallies have been added up by Weber County previously. Mr. Brooks said the county tallied the votes a week ago and emailed the final numbers to Ms. Herrick on November 12, 2013. Ms. Herrick said it is her understanding that the results are unofficial until the canvass board certifies the election and counts the votes. She said only after the Board's vote tonight will she send the official election results to the Lt. Governor's office and Weber County and send out certificates of election to the candidates and notice the results in the newspaper.

Councilor Mitchell asked if Mr. Griffiths and Mr. Hilton can both challenge the results of the Board of Canvass and he asked who will hear a legal challenge and Mr. Brooks said either candidate or any citizen has seven days to file an appeal with the Weber County District Court. Councilor Mitchell said he wanted to clarify the events of October 28, 2013 and Ms. Herrick said five candidates met the 5 p.m. October 28, 2013 deadline and Mr. Griffiths came in the next morning at approximately 8:30 a.m. to file his campaign disclosure. She said he explained to her at that time that it was his anniversary and "he just spaced it" and he asked what was going to happen and she said she believed he would be disqualified but would confer with the Lt. Governor's office and would let him know. According to Ms. Herrick, Mr. Griffiths said he had been reading in the election code and believed he could pay a \$100 fine and remain on the ballot and she said she was not aware that was an option but would look into it and let him know. She said she learned later that Mr. Griffiths then drove down to the Lt. Governor's office.

Councilor Arnold said there is a lot of discussion about when the City Recorder should have disqualified the candidate and he said there is no timeline in the statute for doing this. He said there has also been discussion about whether or not she should have disqualified him but he said the law is clear on this issue that she "shall" disqualify him it is not at her discretion if a candidate misses a financial disclosure deadline. Councilor Arnold said the City Recorder got Council approval for all of the documents included in the Election packet including the financial disclosure deadlines and she has followed through in enforcing this and now the one candidate that missed the deadline is asking the city to recognize a different deadline to prevent him from being disqualified. He said the state needs to clarify the election code and adopt an actual date so there is no confusion for cities. Councilor Arnold said the state and county encouraged Riverdale to do a vote by mail election to increase voter participation and returns were already at 33% of all registered voters not counting the ballots in the locked drop box when the financial disclosures were due. He said in a vote by mail election it is impossible to remove a candidate's name from ballots for missing financial disclosure deadlines. He said he has reviewed state statute and Supreme Court rulings and he said the state's assertion for the October 29 deadline as the way we have always done it is not sufficient and he believes Riverdale's calculation of seven days before the General Election is correct. He commended Ms. Herrick and Mr. Brooks for sitting down and doing the math to calculate the date correctly and he said in his opinion the affidavit Mr. Griffiths signed is binding and it isn't Ms. Herrick's decision, it is her obligation to disqualify Mr. Griffiths and she has done this. Councilor Arnold said Riverdale's October 28, 2013 deadline has been consistent from January through October 29, 2013 when Mr. Griffiths missed the deadline. He said the burden to challenge disqualification should be on the candidate who missed the deadline and he said if Mr. Griffiths decides to take this to court, he hopes the courts will uphold the city's decision. Councilor Arnold recommended the Board certify the canvass as presented.

Mr. Hunt said it is difficult to dig through all the legal terminology and statute and he said in this unfortunate situation the date in the contract is in question and he said if the date was correct the candidate should have been immediately disqualified. He said despite the challenges of a vote by mail election reasonable steps should have been taken to let the public know Mr. Griffiths is not a candidate anymore so those that had not already returned their ballot could have voted for another candidate. He said he doesn't believe people should be denied their right to vote because the date is in question.

Councilor Searle said this is a really difficult situation because both Mr. Griffiths and Mr. Hilton both supported him and he would be happy to work with either one. He said this is an unfortunate situation but as a candidate when he signed the paper saying he would meet the deadline or be disqualified he understood what the outcome would be. He said Ms. Herrick sent at least one email reminding the candidates of the deadline and it is unfortunate that Mr. Griffiths missed the deadline but he feels that the canvass report Ms. Herrick submitted disqualifying Mr. Griffiths should be upheld. Councilor Searle wished Mr. Griffiths the very best if he decided to appeal and said he would be happy to work with either candidate.

Councilor Staten said this is the toughest decision he's had to face on the city council and he said this is a very emotional issue all the candidates can relate to because campaigns are roller coasters. He said he knows how innocent people with good intentions can lead to controversy and newspaper coverage and he said he has great sympathy for Mr. Griffiths as well as the other candidates and the voters whose votes the Board is discussing throwing out. He said the Board needs to remove their emotions and look at the facts which are that the State of Utah defers to the city recorders to run Municipal Elections using Election Code Law. He said the statute clearly reads there must be a minimum or no less than seven days before an election when financial disclosures are due and he said Ms. Herrick prepared the election guide and the forms the candidates are required to sign. Councilor Staten read the affidavit Mr. Griffiths signed:

"I, Gary Griffiths, being first sworn, say that I hereby acknowledge that I have been informed there are three general deadlines for Campaign Financial Disclosure reports due as follows: 30 days after the Primary Election – September 12, 2013 for those candidates who are eliminated from the Primary election. 7 days before the General Election – October 28, 2013. 30 days after the General Election – December 5, 2013 and I do hereby acknowledge that failure to file reports (even if accumulated totals are \$0) by the dates listed above will cause the City Recorder to disqualify and effectively remove the candidate's name from the ballot."

Councilor Staten said not only does this document reference state code seven days before the General Election but it explicitly states that date to be October 28, 2013. He said as City Council members each member of the Council has sworn to uphold the U.S. Constitution which prohibits legislators from creating ex-post-facto legislation to enact laws to affect what has happened in the past. Councilor Staten said for this body to override the laws of the election to affect what happened in the past would violate the constitution and he said he wished he had the luxury to leave the people's vote alone but he said he doesn't feel that is appropriate. Councilor Staten said the City Recorder did her job by researching the law and setting the deadlines the Council and all the candidates agreed to and he said it not the job of this legislative body to interpret the laws that is the

role of the courts. He said he doesn't like the situation the Council is in and although it is uncomfortable he feels that the Council is bound to uphold the law.

Motion: Councilor Staten moved to approve Resolution 2013-37 canvassing, accepting and approving the results of the Municipal General Election held on November 5, 2013 with Norm Searle as Mayor and Brent Ellis and Steve Hilton as Council members. Councilor Arnold seconded the motion.

Mayor Burrows asked for discussion on the motion and Councilor Hunt and he appreciates Ms. Herrick but rules govern the election and Riverdale City has an obligation to obey all the rules not just those they want to.

Roll Call Vote: Councilor Hunt, nay; Councilor Searle, aye; Councilor Arnold, aye; Councilor Mitchell, aye; Councilor Staten, aye. The motion passed with four in favor and one opposed.

Mr. Brooks said Mayor Burrows must also vote on the canvass and Mayor Burrows voted aye in favor of the motion making the total count five in favor with one opposed.

H. Discretionary Items

Mayor Burrows asked if there were any discretionary items and Councilor Searle said he would like the Council to have a discussion at some point in the future about some of the problems associated with vote by mail as identified in tonight's canvass discussion. Mr. Hansen said Ms. Herrick would welcome feedback and observations as she works with Weber County to address other issues like mailing dates and Mayor Burrows recommended this be on the agenda of the next Strategic Planning meeting in February 2014. Councilor Arnold said he won't be a part of the Council at that time but he will share his experiences and feedback with Ms. Herrick before his term on the Council ends so that his views can be taken into consideration. Councilor Arnold said it was frustrating for him as a candidate when he went to the homes of voters but they had already returned their ballot and he said voting by mail creates a very long election day. Mayor Burrows thanked him for his input and noted there were no additional discretionary items.

Adjournment:

With no further business to come before the Council at this time, Councilor Arnold moved to adjourn the meeting. Councilor Mitchell seconded the motion. The motion passed unanimously. The meeting adjourned at approximately 8:10 p.m.

Approved: December 3, 2013

Attest:

Bruce Burrows, Mayor

Ember Herrick, City Recorder