

A Special Session of the Nibley City Council held at Nibley City Hall, 625 W. 3200 S. Nibley, Utah, on Thursday, March 31, 2011.

The following actions were made during the meeting:

OFFICIAL MINUTES OF THE MEETING

Minutes were taken and prepared by Assistant City Recorder Cheryl Bodily

Mayor Gerald Knight called the Special Session of the Nibley City Council to order on Thursday, March 31, 2011 at 6:02 p.m. Those in attendance included Mayor Gerald Knight, Councilman Shaun Dustin, Councilman Larry Jacobsen, Councilman Thayne Mickelson, Councilman Scott Larsen, and Councilman Bryan Hansen. Also in attendance were City Manager, Larry Anhder, and City Treasurer, Cynthia Fredrickson.

Call to order and approval of the evening's agenda

Councilman Larsen made a motion to approve the evening's agenda. Councilman Dustin seconded the motion. The motion passed unanimously 4-0; with Councilman Larsen, Councilman Dustin, Councilman Jacobsen, and Councilman Mickelson all in favor.

Councilman Hansen arrived at 6:03.

Discussion by City Treasurer Cynthia Fredrickson concerning payroll, internal control systems and duties of Treasurer

Mayor Knight instructed Mrs. Fredrickson that if at any time she made personal reference that could be construed as discussing the character of an employee he would stop the meeting and ask the Council to go to Executive Session to protect the employee; Utah code gave them the right as a Council to deliberate in private concerning the competence, character, or mental health of an employee. Mayor Knight said he hoped to keep this as clear and forthright as possible probably would not take public comment and he would allow Mrs. Fredrickson's comments and then turn discussion over to the Council. Referring to a list given to the Council, Mayor Knight said item number 4 was an item that needed to be taken care of in an executive session. Mayor Knight said he understood that Mrs. Fredrickson was opposed to the meeting going to executive session. Mrs. Fredrickson said that Mr. Anhder had told her in order to go to an executive session it had to be "because of a discussion of the professional competence, character, or physical or mental health of an individual"; she said she was not here to discuss those items tonight. She said she felt competent about what she had to say.

Mrs. Fredrickson said she had concerns about the payroll, possible inaccuracies in time reported, calculation errors in general, internal control systems, etc. She said she felt as city treasurer she had the legal obligation to report the possible misuse and/or mishandling of public funds. She said she took her concerns to her supervisor and asked to be informed so she could continue to sign the payroll confidently; she felt if she continued to sign blindly with the concern she had she may be legally bound. She had

suspicion of possible misuse of payroll. She said her request was met with reluctance and resistance and eventually intimidation and threats and wondered why that was. She asked what her responsibilities were regarding monies and funds, especially those requiring her signature. Mayor Knight said they would have a hard time getting into this without going to executive session. Councilman Mickelson suggested they go through the items and state the facts as Mrs. Fredrickson saw them. Then as they discuss them in deeper detail then they should go to private session. When they got to detail about personnel then they could go there. Councilman Larsen said some things could be addressed in an open meeting; specifically what the treasurer's duties were. Councilman Larsen said Utah Code 10.6.141 was very specific on the general duties of a treasurer; to extend beyond those duties were beyond the treasurer. They have a job description for the position and that job description was written by the city beyond written code. Councilman Larsen said audits were all part of public record and could also be discussed. The Council and Mayor Knight discussed whether they should go to executive session.

Mrs. Fredrickson said as a city treasurer she thought there was possible misuse; that was the fact. Mayor Knight said they were talking fraud. Councilman Hansen said he came here because he wanted to give Mrs. Fredrickson a chance to speak and asked that she not ask the Council anymore questions. Mayor Knight said it would take one word to cross the line; they had an obligation as a city to protect their employees and keep their names from being dragged through the mud. Mrs. Fredrickson said she had tried to be careful to not include any names. Mayor Knight instructed Mrs. Fredrickson to continue but to please be careful.

Mrs. Fredrickson said she was instructed to dispose of the documentation she had in regards to her concerns. Mrs. Fredrickson had copies of two city audits; in the 2007 audit it stated "our testing of payroll records including time sheet review and approval procedures indicate that the controls in this area are ineffective. 20% of the payroll records tested did not have the proper review and approval of employee or time; in fact, the time was added or calculated incorrectly in all of these cases and the employee was not paid the proper amount. In some instances the employees were overpaid and in other instances they were underpaid. The city has approved payroll procedures however there is a breakdown in the review and approval process. The management of the city needs to emphasize the importance of these procedures to all city employees especially those in supervisory positions. Payroll should not be calculated until all supporting documentation is properly reviewed and approved by a supervisor. This review and approval process should be clearly noted on the time sheet or other payroll reporting documents and the review process should include steps to ensure that the hours reported by employees are correct and that the addition of the total hours is correct". Mrs. Fredrickson also read from page 17 "we found that the time sheets of many city employees do not have a documented review and approval noted on the time sheet. We also noted that there are no written records to track comp time. We recommend that the city administrator or a department director or supervisor review and approve all times sheets and that this review and approval be clearly documented on each time sheet". Mrs. Fredrickson referenced the 2010 audit which said there was significant deficiency in payroll processing and that

there was no supervisory review or approval to the payroll prior to payroll being distributed.

Mrs. Fredrickson said she did not feel comfortable as a city treasurer in signing the payroll because these things had not been addressed. Mrs. Fredrickson said she told would be found guilty of insubordination for not signing the upcoming paychecks when she went to her supervisor repeatedly with concerns over feeling confident signing her name at which time she asked to speak to the Council. She said the next day she was told she was close to losing her job. Mrs. Fredrickson said she would like it on record that she had not talked to any another employee; if the other employee found out about this it was from another source. Mrs. Fredrickson said she was told that her resignation would be welcome. Mrs. Fredrickson said she wanted to be able to represent the citizens as a city treasurer and felt the fiduciary responsibility to protect them. She said this had not a pleasant experience to date. Mrs. Fredrickson said she had a great deal of respect for the Council but felt she had a responsibility to the Council, the citizens of Nibley, and to herself to be able to confidently sign her name when representing the City of Nibley and the monies of the city.

Mrs. Fredrickson said she would like to know who when she had a question she should go to and how she should handle it and she would like a detailed job description. Mrs. Fredrickson said there had also been a lot of question as to whether she had been asked to be office manager. She distributed a document from 2008 to the Council. Mrs. Fredrickson thanked the Council for their time.

Councilman Larsen asked Mrs. Fredrickson if she had a job description. Mrs. Fredrickson said she did not. She had given the Council a list of things she did do. Councilman Jacobsen said he was interested in hearing the details on how they handled payroll and timecards. Mr. Anhder said he found it hard to address generalities that could not be backed up. He said everything read from the audits was public record and had been previously given to the City Council and discussed between the City Council, the auditor, and the Mayor; it was not new revelation. There had been some mistakes; they were aware of them but he believed they had made good progress but they would have to wait for the next audit. Councilman Larsen asked what their review process was for that. Mr. Anhder said all time sheets were reviewed by the supervisor or department head and signed before the paychecks are distributed. They payroll was calculated and reviewed by the payroll clerk for accuracy but she did not review hours; only the supervisor or department head did that. Councilman Jacobsen asked if there was a place on the timecards for signature approval. Mr. Anhder said yes, they were all being signed. Mr. Anhder said one problem the auditor had in the past was compensatory time and they were not sure the auditor understood it. Mr. Anhder said compensatory time was logged in at their normal time and not time and a half. Councilman Dustin said it sounded like the concern was that the treasurer was being asked to sign things that she did not review. Mr. Anhder said that was correct but it was not the treasurers responsibility to review that that; it was also not the treasurer's responsibility to review bills paid or to match up invoices. State Law states it is the treasurer's responsibility is to say "yes" there was money to do this. Mrs. Fredrickson said it was her belief that timecards were not being

signed before payroll is paid. Her concern was that the numbers did not add up in a month unless they were being asked to work additional time. There was an issue of an employee being paid an additional 68 hours in one paycheck. She said she went to Mr. Anhder and asked to be informed if an employee was being asked to come in extra hours so the numbers could add up. Councilman Jacobsen asked to stay on the issue at hand and asked where they were now with supervisory review on time sheets. He asked if they had supervisors reviewing timecards. Mr. Anhder said they did. Mrs. Fredrickson disagreed with that. She said she believed there were times more that not that she signed the paychecks before a signature was put on the timecard.

Councilman Mickelson made a motion to go to executive session to discuss the character, professional competence, or physical or mental health of an individual. Councilman Hansen seconded the motion.

Councilman Dustin took personal privilege and left at 6:37.

Councilman Larsen said he would like to discuss some of this for the public but they seem to keep coming back to issues that they needed to deviate from. Councilman Mickelson said he read the report and he knew there were deficiencies and he apologized to the public for not following up on those deficiencies personally. Councilman Jacobsen said he did not feel they needed to go to executive session to hear the facts. It was a simple question of if the timecards were being reviewed by the supervisor, if there was a place on the timecard for approval, and if they were being signed; he asked if Mrs. Fredrickson could produce a timecard without a signature. Mrs. Fredrickson said she could not. She told Councilman Jacobsen that he probably would not find one without a signature. Mayor Knight said they were deviating from the motion. Councilman Larsen said he wanted to address if these payroll process were in place and some of the issues of Mrs. Fredrickson job; those were things they could address before going to executive session if they could hold off from the personal issues and the 68 hours. Mayor Knight said he was concerned the allegation was already out there because information had been distributed to the public present and sometimes it is best to be addressed in the forum in which it was made. Mayor Knight said he had personal knowledge of the events and had evaluated them; he sat with the accuser and one of the accused and could find no wrong doing; there was an explanation for all of it.

The motion tied 2-2; with Councilman Mickelson, and Councilman Hansen in favor. Councilman Jacobsen and Councilman Larsen were opposed. Mayor Knight broke the tie by voting to not go to executive session and the motion failed.

Councilman Jacobsen said the burden of review fell first to the employee in filling out the timecard and then with the supervisor to review the timecard. The job of accurate timecard taking is with the employee and the job of timecard review is with the supervisor; it did not lie with the person signing the check. Councilman Jacobsen said he was addressing since June 30, 2010; what was their procedure today? Mr. Anhder said their procedure to date and has been since the report in 2007 where it talked about supervisory sign off was that the supervisor sign and reviews the time sheet and that was

being followed. Councilman Mickelson read from the 2010 audit: “in all cases there was no supervisory review or approval of the payroll prior to the payroll being finalized and distributed. Mr. Anhder said he had no idea because that was just not what happened; there were two people that give that final approval; himself and Bill Saunders. Public works employees were signed by Mr. Saunders and all other employees were signed by him. Mr. Anhder noted that it did not say “signature”. Councilman Mickelson said they may be looking at the need for an updated system; the thorough review may not be taking place. Councilman Larsen said if the auditor was saying that it was not happening and we are saying that it was happening then he did not know how the auditor could say the review was not being done unless there were discrepancies with numbers. The signature is taking place but the review may not be. As far as the issuance of the check; in Utah Code 10.6.143 spelled out the duties in respect to the issuance of checks. “The treasurer, or in his absence, the deputy treasurer appointed by the governing body, shall sign all checks prepared by the auditor or recorder. Prior to affixing the signature, the treasurer or deputy treasurer shall determine that the sufficient amount is on deposit in the appropriate bank account of the city to honor the check. The governing body may also designate another person other than the city auditor or city recorder to countersign the checks”. Councilman Larsen said the treasurer’s responsibility is to make sure there is sufficient funds in the account to cover what is being issued; if that is wrong that is not his/her responsibility. This is the same with their city treasurer. Councilman Jacobsen said when Mrs. Fredrickson signs a check she was not signing to the accuracy of that check. If she thought something was wrong then she should talk to someone about it being wrong. Councilman Larsen said if sufficient funds were there she should sign the check; it had nothing to do with doing it blindly. Councilman Mickelson in the court of law the treasurer would not be at fault for those issues. Councilman Larsen every treasurer has a bond that is issued only for that treasurer for errors of omission; she is not held liable for any wrong checks unless she knowingly signed the check knowing there was not enough to cover it in the bank. Councilman Hansen asked what an employee would do if they found a discrepancy on their paycheck. Mr. Anhder said they would come to the payroll clerk and express their problem and if necessary they would come to him for resolution. Cameron Fredrickson thought from the audit they kept referring to that they could address that the supervisors review was not in place prior to payroll being distributed. Mayor Knight said they had determined that was not the treasurer’s responsibility; it was the supervisor’s responsibility. Mayor Knight described timecard procedure at Nibley City and that some salaried employees were not required to keep their time at work; it is assumed he will perform his responsibility and is paid to do so. Councilman Jacobsen said the signature needed to be on the timecard before they process the payroll even if it meant the employees were paid later. Mr. Anhder said the only timecards that could even be in question would be the timecards from him because Mr. Saunders brings the timecards in having already been reviewed and signed. Sasha Takis asked why Mr. Anhder didn’t have to account for his time. Mayor Knight said the City Council had not required that of him. Mrs. Takis went on record that it was wrong. Mayor Knight his personal opinion was that it was ridiculous to have to document time on an employee; if they cannot trust them to do their job and have to run around and check on them then they have lessened the ability of that employee. Maryann ??? said Mr. Anhder was considered an exempt employee; he was hired to do a specific job; if it

takes him four hours a day or four hours a week if he performs appropriately and has that exempt standard and meets that standard because he is in authority he is not required to turn in a time sheet. He could be put in jeopardy of wage and hour by doing so. She said this whole meeting could be solved if they had job descriptions for their employees. Mrs. Fredrickson is not held accountable for her job description if she does not know what it is. Mr. Anhder said he wanted to clarify that he did turn in a time sheet for every payroll accounting for his hours. Mayor Knight noted there was a danger in doing that.

Mayor Knight said he wanted to discuss the fourth item specific which said a staff member responsible for doing payroll consistently reports 25-30 hours above their regular hours monthly. Mrs. Fredrickson said that over and over again it was consistently over. Councilman Larsen asked for a definition of consistent. Mrs. Fredrickson said had brought it to her supervisors attention and she had been told what her hours should be and said she had only seen three paychecks; she was told she was a six hour employee; she had never been authorized to work beyond 5:00 p.m. and should really be leaving at 4:00. Mayor Knight said this was an employee that was listed as a $\frac{3}{4}$ time employee but was not limited to $\frac{3}{4}$ time. She has responsibilities and a job to do and is asked to do additional responsibilities at times and is not expected to do them for free. The last three months reviewed there was roughly five hours extra per week. Apparently there was work that was required to do. Councilman Larsen said even those hours existed beyond what the perceived amount that should be worked; they were worked and were paid for. Mr. Anhder said he supervisor knew that and signed off on the check. Mrs. Fredrickson said the supervisor told her he had never authorized her to stay past 5:00 other than Monday. Mayor Knight asked if it was Mrs. Fredrickson responsibility to monitor this employee's hours and job she is doing. Mrs. Fredrickson said it was not. Mrs. Fredrickson said she wanted to be able to sign confidently on the paycheck line; this is also the person doing the payroll. Mrs. Fredrickson said she never said the hours were not being worked; she read from line 4 "the staff member responsible for doing payroll consistently reports 25-30 hours over and above their regular hours". Councilman Larsen said they were actual hours being worked; as long as they were hours being worked it did not fall under Mrs. Fredrickson's privy. Councilman Jacobsen asked who authorized additional time above $\frac{3}{4}$ hours for this employee. Mr. Anhder said he did and had approved it; the court work load had increased, she had been filling in as a crossing guard when there was an absence, and she was doing all the purchasing; the job had grown. Mr. Anhder said he was fully aware of the number of hours she had put down. He said there was absolutely and unequivocally no fraud on her part; if there was a problem it was his for allowing the extra hours. She did not put down time that she was not here in the office and working. Mrs. Fredrickson said she never said that. Mayor Knight said Mrs. Fredrickson came in with a sheet of papers with documented times of her coming and going and had accused this employee of writing more time on her timecard that she had not worked. Mrs. Fredrickson said she had not done that. Mrs. Fredrickson, Mr. Anhder, and the Council discussed specific of the employee's hours.

Councilman Larsen asked what point Mrs. Fredrickson was trying to make on item 4. Mrs. Fredrickson that there were 25-38 hours more being worked that the city manager may not have authorized. Mr. Anhder said he had authorized that. Mrs. Fredrickson said

he had not told her that till just now. Councilman Jacobsen said if he was authorizing additional time for employees that did not need to be done then they could have issue. Mayor Knight addressed "I have evidence that they have received eight hours of holiday pay for each Monday". He said the employee was working more than the typical eight hour day on Mondays due to court and as of late has filled in for part-time employees. The problem was there were two holidays that fell on a Friday and both of those days she put down 6 hours. There were two other occurrences of holidays that fell on a Monday and she put down 8 hours; understandable the employee put down 6 hours with the thinking that she worked those hours on a Monday. Mr. Anhder has since visited with her and told her that was not the practice; they should only be writing six hours. The Council discussed the employee and comp time. Councilman Larsen said this was an issue that had been addressed and corrected and they should make sure all part-time employees are aware of the policy. Councilman Mickelson said at some point in time they should have a discussion on improving their procedure. Mayor Knight said there were not enough inaccuracies to warrant that discussion, maybe training.

Councilman Jacobsen said if Mrs. Fredrickson had evidence that someone was putting time on their timecards that they had not worked they wanted to know about it. Either on purpose or not but there needed to be data there to support it. Mrs. Fredrickson said she did not know if she would feel comfortable doing this again and asked if her job would be in jeopardy if she did that. Councilman Larsen said Utah Code in Title 67 would protect her as a "whistle blower"; she can make those accusations but if she made a whole bunch that proved to be not true then it goes beyond whistle blowing and became another issues. Councilman Larsen said in the future if she felt there was wrong doing then she should bring it up. Mrs. Fredrickson asked Councilman Jacobsen and Councilman Larsen what proof she had to have; a suspicion or did she have to have facts? Councilman Jacobsen and Councilman Larsen said she had to have facts.

Councilman Dustin returned at 7:29.

Mrs. Fredrickson discussed events and conversations held with Mr. Anhder and Mayor Knight. Councilman Mickelson said they had been talking about Mrs. Fredrickson treasurer responsibilities and it had been noticed to them that she also had office manager responsibilities; he asked if she was the office manager. Mayor Knight said that was an inaccurate assessment; that was a temporary assignment. Mrs. Fredrickson said she was not officially an office manager. Councilman Mickelson asked if it was legal for him at any time to come in and review time sheets. It was decided it was not.

Councilman Mickelson made a motion to go to closed session to discuss the character, professional competence, or physical or mental health of an individual. The motion died due to lack of second.

Thomas Fredrickson said basically he understood their city treasurer who didn't have a job description at the time. Councilman Larsen said she had a job description with Utah code. Mr. Fredrickson said she went to her supervisor with a suspicion about signing something she thought was incorrect and it sounded like she was told to put her head in

the sand and was not addressed to the point where she could feel it was o.k. It was brought to Council because she had never been told that the hours were approved. Mayor Knight said he had specifically addressed every accusation with evidence on Wednesday. Councilman Larsen said in talking to Mrs. Fredrickson; she had told him that inaccuracies had not been resolved and were not accurate and she had documentation. Tonight they had seen that the review they did was accurate. Mrs. Fredrickson said she had progress as she had been here too. To say she was not addressed was inaccurate; it just wasn't the result she wanted. Meetings and timelines were discussed.

Mayor Knight said these were very serious allegations to him and if the allegations were shown to be false he took it very seriously that the same employees who made the allegation kept making those allegations. Councilman Dustin said he was uncomfortable with where the discussion was going.

Carl Fredrickson said they had learned things tonight that they didn't know; that she is bonded and cannot be held responsible. Mr. Fredrickson described a situation he had at work where accusations were made. They thought she had a legal obligation to act and that they would come after her. Mrs. Fredrickson said part of the reason she brought this to the Council was that she felt her job was on the line.

Corlyss Drinkard said there was enough he said/she said to be thoroughly confused. She wanted a commitment to follow through with Councilman Mickelson suggestion and improve their procedures and include a more rigorous standard of documentation of what's been done when serious allegations are brought to their attention. Mayor Knight said that documentation is being done. Councilman Larsen read state code addressing allegations which noted documentation to prove things not to bring things forward.

Denny Clark said he was concerned that it was published in the paper that there would be a "professional competence, character, or physical or mental health of an individual". He questioned if the issue was on time sheets and finances, etc and why that had shifted to her character. Mayor Knight said they published that so they could go to executive session and discuss the character of the accused. Councilman Larsen said there were only certain things they could go into executive session for and described that those were some of the reasons that their meeting would go to executive session.

Councilman Mickelson said he hoped through this process of this they could come to the understanding that when conflicts exits great things can come from it. He hoped they could make a better situation of employee relations and process to make their city better.

Councilman Mickelson made a motion to move to executive session to discuss the character, professional competence, or physical or mental health of an individual. Councilman Hansen seconded the motion.

Councilman Larsen read Utah Code 52.4.206.5 noted that the recording and written minutes of a close session could only be disclosed by a court order; they were protected records for a reason. Councilman Jacobsen asked if there was something constructive to

be gained by going to closed session. Councilman Mickelson said he would like the opportunity for people involved in this to have the right to give their information. Mrs. Fredrickson said she did not have any other issues and felt comfortable that she could sign her name.

The motion passed 5-0; with Councilman Mickelson, Councilman Hansen, Councilman Jacobsen, Councilman Dustin, and Councilman Larsen in favor.

The Council discussed who should be left for executive session.

The special session of the City Council meeting was recessed at 8:01 to go to executive session.

The special meeting of the Nibley City Council reconvened at 9:50.

Councilman Jacobsen told Mrs. Fredrickson that she still had a job and she owed that to Mr. Anhder; he was her advocate and was on her side. She was told at the Council's request she would be put on probation and there would be specific terms of that probation outline and made clear to her and she was expected to live up to those terms. Those conditions would be reviewed at a future date. Councilman Dustin said the probation had nothing to do with the whistle blowing; that would be addressed in the term of the probation. Councilman Jacobsen said this would be dealt with between her and the City Manager and the Council would review it and be kept apprised of it. Councilman Larsen said if she had reason to believe something was amiss then she shouldn't hold it in and should go through channels. They appreciated that she had brought this to their attention. Mr. Fredrickson asked if he could be with Mrs. Fredrickson in the meeting between her and Mr. Anhder. Mayor Knight told him that would be inappropriate.

The meeting was adjourned at 9:53.