

STATEMENT FROM THE CITY OF CEDAR HILLS
JANUARY 7, 2013

Where inaccurate or incorrect information is publicly advanced, the City feels it is in the interest of the community to provide an accurate and correct summary. Recently, statements made on a public website present inaccurate or incomplete information regarding a recent lawsuit and legal fees. The City wishes to address those statements.

Statement #1 – “On November 15, the City of Cedar Hills announced agreement to pay a \$190K to settle a lawsuit filed by the Utah Valley Homebuilders Association against CH for “illegal” use of the \$2.9 million impact fees collected for the building of a Recreation and Swimming (aquatic) facility. The funds were instead used to build a golf clubhouse, golf pro shop, and wedding reception center the City sometimes calls a “Rec Center”.

Response ó Mr. Cromar, who made these statements on behalf of a group known as Cedar Hills Citizens for Responsible Government, has absolutely no knowledge about settlement discussions and his statements about them are wholly incorrect. On November 15, 2012 the Cedar Hills City Council unanimously agreed to approve a settlement agreement to resolve a lawsuit with the Utah Valley Homebuilders Association. In April, the Association filed an action against the City regarding the collection and use of impact fees for recreation facilities.

Under the terms of the settlement agreement, the parties agree that no liability has been established and that by settling the City does not admit to any wrongdoing. The City agreed to pay \$175,000, which is approximately the amount of recreation impact fees that had not yet been spent, and reimburse attorney’s fees in the amount of \$15,000. Additionally, the City adopted an ordinance to repeal the recreation facilities component of the park impact fee previously assessed and collected by the City. The City will continue to collect the park land and park development portion of the park impact fee as provided in the City’s fee schedule.

The City’s use of impact fees for the Community Recreation Center was legal. While a portion of the facility does provide recreation as a golf pro shop, the rest of the facility is used for both events and other recreation. Recreation classes are held almost every day during the week and a list of classes can be found at <http://www.cedarhills.org/recreation/fitness-classes>. Last month the City hosted the 1st annual city-wide Christmas party where children were able to visit with Santa, make a craft, and families were able to enjoy hot cocoa and candy canes. A reading class for preschool children is held twice a week at the center. Additionally, the City is currently discussing adding additional recreation components to the basement of the facility. Mr. Cromar continues to claim that the facility is only for golf and wedding receptions but his claim is simply not true. His statements are not based on any knowledge of what happened, making them appear calculated to cause discord rather than inform or clarify.

Statement #2 – “Had the City simply fully obeyed the law and built the rec & swimming pool facilities for which the money was collected, within the legal time frame according to Impact Fee Law, then the Utah Valley Homebuilders Association would have had no grounds for a lawsuit.”

Response ó Again, even after the City issued an explanation regarding the lawsuit filed by UVHBA Mr. Cromar uses a public forum to distort the facts and mislead residents. UVHBA made several allegations against the City in their lawsuit. On page 10 of the lawsuit one allegation reads:

óAccording to Utah Code Ann. 11-36a-202(i)(ii), an impact fee cannot be used to raise the level of service that a community enjoys in a given public facility. í .The City has collected recreational impact fees as a separate category of impact fees for a number of years, thus setting

that category aside as representing a different level of service. The City did not have any recreation facilities prior to 2011, and thus had no previous level of service for recreational facilities. Any such facilities provided through impact fees must therefore represent an increase in the level of service, which is prohibited by statute. ¹ The use of RF fees to build the club house, **or any recreational facility**, was therefore illegal and contrary to statute. (Emphasis added).

The foregoing allegation challenged the collection of impact fees at any time for any type of recreation center or pool. Mr. Cromar has a copy of the lawsuit and had read this allegation yet continues to claim that had a different type of recreational facility and/or swimming pool been built the City would not have been sued. This again is simply not true. In fact, UVHBA has not asked the City to change how the facility is being used but did agree that the City simply return any unused recreation impact fee funds and stop collecting future recreation facility impact fees, with which the City complied.

It is also interesting to note that Mr. Cromar now says the City should have spent the funds within the legal time frame of six years, yet at the June 22, 2011 Council meeting he urged the City to delay spending impact fees and accused the City of being dishonest when the City stated the funds needed to be spent or committed by June 30, 2011. In his words Mr. Cromar said that was a fallacy and a myth. However, ever eager to cast blame, he now appears to be saying the City should have spent the funds sooner.

Statement #3 – “Ironically, the reason for GRAMA requesting the billings was to learn if the city had properly or improperly used taxpayer dollars in legal fees, and the City appears intent to waste more money in legal fees to try to avoid providing the public copies of the public record. This was the case with the Secret Emails that the Records Committee ORDERED be gathered and provided to Cedar Hills Citizens for Responsible Government, and it will likely be the same if the City has to explain itself before the Records Committee again. Obeying the law would cost the City zero, and would be more reflective of “open, honest and transparent” government.”

Response ⁶ The City has never improperly used taxpayer dollars for legal fees. It is true that our legal fees have increased considerably over the past year; however, a large portion of this is due to frivolous complaints filed against City employees and officials by Mr. Cromar and others in his group. These include things such as:

- A complaint filed by Mr. Cromar and Mr. Dearing in 2011 disputing the building of the Community Recreation Center (their complaint was denied);
- A complaint filed by Mr. Sorensen and Mr. Severn in 2012 with the Utah County Attorney against former mayor Eric Richardson and former city manager Konrad Hildebrandt (the Utah County Attorney stated that the allegations presented did not support a criminal investigation and therefore refused to proceed);
- A complaint filed by Mr. Sorensen and Mr. Severn in 2012 with the Fourth Judicial District Court against former mayor Eric Richardson and former city manager Konrad Hildebrandt asking the Court to compel the Utah County Attorney to investigate their previous claims (the Court denied the request of the accusers to issue a writ or order to review the investigation as the Utah Constitution prohibits any attempt by the courts to assume management of an investigation);
- A complaint filed with the Utah State Records Committee by Mr. Cromar in 2012 regarding the access of certain emails between the former mayor and council members (prior to the hearing the City had agreed to provide emails within its possession after Mr. Cromar prepaid for his request. Mr. Cromar was ordered to pre-pay);

- A complaint filed with the Utah State Records Committee by Mr. Cromar in 2012 requesting a reimbursement of fees he paid for a GRAMA request and that a fine be assessed against the City for non-compliance (the Committee unanimously denied each of Mr. Cromar's requests, stating that there was no evidence that this request primarily benefited the public and that the City was allowed through GRAMA to require prepayment. The Committee also denied Mr. Cromar's request to fine the City because it was clear the City had complied with the law and any delay was caused by Mr. Cromar's prior refusal to pay the cost of fulfilling his request).

The City has been forced time and again to defend itself from these frivolous and untrue claims. While the City Council would hope to reduce the amount spent in legal fees, Mr. Cromar on behalf of Cedar Hills Citizens for Responsible Government, continues even now to threaten additional complaints that will require further un-budgeted legal representation. Establishing truth and distinguishing it from lies and falsehoods takes time, effort, and money. City expenses would be reduced if Mr. Cromar refrained from spreading lies and falsehoods.

Mr. Cromar states that obeying the law would cost the City zero; however, he wants the City to not comply with aspects of the GRAMA laws that keep certain records private and confidential. While the City is required by law to provide public records to anyone who asks, the City is also required by law to protect any records that are considered private, controlled, or protected. In a recent GRAMA request made by Mr. Cromar for legal billings the City provided all public details and redacted the protected information. Mr. Cromar is now threatening to again complain to the Utah State Records Committee simply because the City is obeying that portion of the GRAMA law.

Statement #4 – “Please note that Peter Stirba of Stirba & Associates was hired by the City to defend then Mayor Eric Richardson & City Manager Konrad Hildebrandt against an Judge James Taylor of the Fourth District Court who ORDERED an investigation last January 2012, by the Utah County Attorney as per State Code.”

Response ó This statement is again deceptive. In January of 2012 Mr. Sorensen and Mr. Severn filed a 46-page complaint with the Utah County Attorney alleging Mr. Hildebrandt and Mr. Richardson were guilty of malfeasance, misconduct, and other õhigh crimes and misdemeanorsö and requested the removal of both individuals from their positions with the City. After reviewing the complaint in February 2012, the Utah County Attorney stated that the allegations made did not support a criminal investigation and therefore refused to proceed. In August 2012 Mr. Severn and Mr. Sorensen filed an additional request with the Fourth Judicial District Court asking the Court to require the County Attorney to further investigate the allegations they have made.

The Utah State Constitution divides powers of the government into the Legislative, the Executive, and the Judicial branches and prohibits one branch from exercising the powers belonging to another. The Court recognized that õconstitutions in the United States have always been regarded as documents which limit government powers to protect individual rights. Unlimited, unfettered authority to investigate is not consistent with every person's right to be protected from general searches or examinations not based upon reasonable suspicion or probable cause.ö The Court also stated that the County Attorney is required to investigate claims of criminal misconduct and this investigation could õencompass anything from a simple review of matters presented to a detailed search implicating the use of expert review and all of the police powers available to the State.ö

As the Utah County Attorney did properly investigate the allegations made by Mr. Severn and Mr. Sorensen, the Court denied the request of the accusers to issue a writ or order to review the investigation as the Utah Constitution prohibits any attempt by the courts to assume management of an investigation.

It is frustrating that Mr. Cromar, ostensibly representing the group Cedar Hills Citizens for Responsible Government, continues to twist facts in order, apparently, to intentionally mislead residents and present City officials and staff in a negative light. While the majority of residents in the City are looking for ways to come together and work towards the future, Mr. Cromar continues his crusade to cause contention with incorrect information. If any elected official made statements so far from the truth it would be appropriate for the citizens and press to publicly denounce such falsehoods and lies. The City will continue to address any incorrect or misleading data that is presented and encourage residents to visit the City's website to receive these updates. Residents who have questions are encouraged to contact Mayor Gary Gygi or City Manager David Bunker. Contact information can be found online at www.cedarhills.org.

Media inquiries can be sent to Jenney Rees at jrees@cedarhills.org