

OCTOBER 2, 2012

STATEMENT FROM THE CEDAR HILLS MAYOR AND COUNCIL

Recent GRAMA Request and the Open and Public Meetings Act

Where inaccurate or incorrect information is advanced, the City Council feels it is in the public interest to provide an accurate and correct summary. It has come to our attention that some inaccurate information has been provided regarding a recent GRAMA request and information on the Open and Public Meetings Act.

Statement #1 – *“Emails were illegally withheld from the public record.”*

Response: This is not true. The City repeatedly agreed to provide all applicable emails in its possession. There was an open question whether emails on personal email accounts of former Council members were private or public records. The Utah State Records Committee ruled in June that emails about City business are public records, even on personal accounts of former Council members. The City promptly worked to obtain copies of those responsive emails. However, in June and again in September, the Utah State Records Committee ruled that until the City received payment for searching for and compiling responsive emails, the City was not required to gather those records. The City received payment in July, and in September the Records Committee ruled that the City had timely delivered the records, denying Mr. Cromar’s requests for sanctions. The reason that city-related emails were stored on personal accounts is because the Mayor and Council did not have access to the City network so the email program was setup to automatically forward any emails received at their city email address to their personal email account. This had been the policy since email accounts were first established with the City and is still a standard practice for many cities. Since this request, the City brought in an IT professional to modify the Mayor and Council email accounts so that each elected official is now required to remotely access the network to receive their emails and each one is stored on the City server, meaning the City will have copies of these emails.

Statement #2 – *“Utah State law does not allow for more than two Cedar Hills public officials from the City Council (the mayor and five Council) to communicate with each other in person, email, over the phone, etc., unless the time and date of the meeting is a publicly noticed in advanced. Doing so creates an illegal meeting.”*

Response: Portions of this statement simply misstate the law. The Open and Public Meetings Act defines a meeting as “the convening of a public body, with a quorum present, including a workshop or an executive session whether the meeting is held in person or by means of electronic communications, **for the purpose of discussing, receiving comments from the public about, or acting upon a matter over which the public body has jurisdiction or advisory power.**” The wording in bold is very important because it details what type of information can only be addressed in an open and public meeting. It goes on to explain that a meeting is not “a chance meeting, a social meeting, the convening of a public body that has both legislative and executive responsibilities where no public funds are being appropriated for expenditure during the time the public body is convened and the public body is convened solely for the discussion or implementation of administrative or operational matters for which no

formal action by the public body is required or that would not come before the public body for discussion or action.” Additionally, the law goes on to address emails specifically and states “Nothing in this chapter shall be construed to restrict a member of a public body from transmitting an electronic message to other members of the public body at a time when the public body is not convened in an open meeting.”

What this all means is that three or more members of the Council cannot get together in person or via phone and discuss, receive comments about, or act upon any matter where the Council needs to vote on the issue. These types of discussions must happen in an open and public meeting where anyone can listen to the deliberation and voting take place. However, it is acceptable for three or more council members to be together at a chance meeting (such as running into each other at a grocery store) as long as city discussions that need to be voted on do not take place; at a social gathering, such as a holiday or birthday party; and to discuss certain administrative or operational matters that do not require a vote or would not normally be a topic at a Council meeting. For example, Cedar Hills is a small city so the Mayor gives each council member specific assignments to work on instead of hiring additional employees. This is true for things such as marketing events or city programs, communications, and identifying potential businesses for our commercial area. That list is not all-encompassing but provides good examples of things that members of the Council are allowed to discuss outside of an open and public meeting. More information on the Open and Public Meetings Act may be found at http://le.utah.gov/~code/TITLE52/htm/52_04_010300.htm and the portion discussing emails may be found at http://le.utah.gov/~code/TITLE52/htm/52_04_021000.htm. The bottom line is that Cedar Hills elected officials have not been having any illegal meetings, electronically or otherwise, and have always complied with the Open and Public Meetings Act.

Statement #3 – *“What should have taken 10-days, was delayed by the city to over 200+ days.”*

Response: As the Utah State Records Committee told Mr. Cromar in June and again in September, under Utah law the City had no obligation to provide him records until after he paid the estimated cost of searching for responsive emails and compiling them. In writing on April 24th, Mr. Cromar put his request “on hold”. It remained on hold until July, when he made payments. Once he made payments, the first payment of \$500 on July 6th and the second payment of \$200 on July 23rd, the City promptly acted to fulfill his request. As Utah law provides, the City informed him that due to extraordinary circumstances, including the large number of responsive records that contained private and protected information that needed to be redacted, it would take longer to fulfill his request than usual. Mr. Cromar rejected the City’s extension and asked the Records Committee to impose sanctions. In a unanimous vote, the Records Committee denied Mr. Cromar’s request for sanctions, finding that the City fulfilled the request in a timely manner. A more detailed timeline can be found in the State of the City newsletter, available online at <http://www.cedarhills.org/sites/default/files/state-of-the-city-report-2012-09-18.pdf>. The GRAMA portion begins on page 18.

Statement #4 – *“Despite the city’s impressive PR effort with a flashy, high gloss ‘State of the City’ report, nowhere in the report will you find a documentation of the year by year investment made by Cedar Hills families into the failed golf course.”*

Response: City staff and officials are dedicated to complete transparency. Last year it became evident that a comprehensive report regarding the golf course financials needed to be created and provided to residents. Earlier this year former mayor Eric Richardson formed the Golf Course Finance Advisory Committee, which consists of several Cedar Hills residents, two council members, the Mayor, and members of the Finance team. This Committee was tasked with reviewing all aspects of the golf course financials and creating a comprehensive report. The only reason why this information was not provided in the State of the City newsletter is because the committee has not completed their research. They will be finished by November and will be having a town hall meeting to present their findings to residents. The date, time, and location of that meeting will be announced via the newsletter, website, Facebook, and Twitter. Every effort is being made to provide full information, regardless of what some may claim.

Statement #5 – *“Reportedly, the Utah Home Builders Association plans to sue Cedar Hills for improper use of impact fees. No wonder they plan to raise our utility rates, and possibly other fees and taxes.”*

Response: The Utah Homebuilders Association has filed a lawsuit against Cedar Hills with regards to the collection and use of recreation impact fees, and this was announced to residents in the August 2012 newsletter. The Council is working with the City Attorney on this issue. However, the claim that this somehow impacts utility rates or others fees and taxes is baseless and incorrect. In March of 2012 (before the lawsuit was filed) the Council authorized Bowen, Collins, and Associates (BC&A) to perform a utility rate analysis study to determine if the City needed to update utility rates to handle changes in demand patterns and cover future maintenance costs. After doing an in depth review of each utility service and determining future needs, BC&A suggested a rate increase for each year over the next ten years to cover the costs associated with operations and management, debt service for the culinary well and PI system, and capital improvement expenditures related to the upgrade, maintenance, repair, and/or replacement of each utility service. The Council approved the utility rate increases based solely on the recommendation of BC&A and months prior to the lawsuit being filed by the Utah Homebuilders Association. The two have nothing in common. Additionally, the Council is not increasing other fees or taxes to accommodate this lawsuit.

Statement #6 – *“We can only wonder how many parks, libraries, soccer fields, etc. could have been built for Cedar Hills families with that wasted money.”* (re: recreation impact fees used for the Community Recreation Center).

Response: Though Mr. Cromar likes to tell people that the City could have used the collected recreation impact fees for parks, a library, or to pay off debt, that simply isn't true. Recreation impact fees were collected and could be used for one purpose only and that is to build a recreation center. Legally, the City could not spend that money on anything else. There are separate impact fees that are collected for park land acquisition and development. The former Council wanted to implement a library with the Community Recreation Center but after doing some research, the City Attorney reported that the State did not consider a library to be recreation, therefore no recreation impact fees could be used to build one. The fees used to build the Community Recreation Center were all recreation impact fees that could not be used for any other purpose.

Allegations Made Against Eric Richardson and Konrad Hildebrandt

In addition to the above statements that were incorrect, the Council would like to address the allegations made by Paul Sorensen and Ken Severn against former mayor Eric Richardson and former city manager Konrad Hildebrandt. In January of this year 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 “high crimes and misdemeanors” and requested the removal of both individuals from their positions with the City. After reviewing the complaint, in February 2012, the Utah County Attorney issued a letter that the allegations made did not support a criminal investigation and therefore refused to proceed. Not satisfied with this response, Mr. Severn and Mr. Sorensen filed a request with the Fourth Judicial District Court in August asking the Court to require the County Attorney to further investigate the allegations they have made. The Court issued an order in September recognizing that “constitutions 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.” The Court denied the request of Mr. Sorensen and Mr. Severn 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. The Council respects the decisions made by the Utah County Attorney and by the Courts and considers the allegations without credence and the complaint dismissed.

We will continue to address any incorrect or misleading data that is presented and encourage residents to visit our website to receive these updates. We also encourage any resident who has a question to contact Mayor Gary Gygi or City Manager David Bunker. Contact information can be found online at www.cedarhills.org.