

MINUTES

**McCall City Council
Regular Meeting
Legion Hall (McCall City Hall - Lower Level)
February 11, 2010**

Agenda

Call to Order and Roll Call
Executive Session
Reports
Pledge of Allegiance
Approve the Agenda
Public Hearing
Public Comment
Consent Agenda
Business Agenda
Executive Session
Adjournment

CALL TO ORDER AND ROLL CALL

Mayor Bailey called the regular meeting of the McCall City Council to order at 4:35 p.m. Mayor Bailey, Council Member Delaney, Council Member Kulesza, Council Member Scott (via phone) and Council Member Witte answered roll call. A quorum was present.

City staff present was Lindley Kirkpatrick, City Manager; Bill Nichols, City Attorney; Jeff Strother, Attorney (via phone); Allen Ellis, Attorney (via phone); and Kim Trout, Attorney (via phone).

EXCUTIVE SESSION

At 4:35 Council Member Kulesza moved to go into Executive Session for Litigation – Pursuant to Idaho Code §67-2345(1) (f) to communicate with legal counsel for the public agency to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated. Council Member Witte seconded the motion. In a roll call vote Council Member Kulesza, Council Member Witte, Mayor Bailey, Council Member Delaney, and Council Member Scott all voted aye and the motion passed.

OPEN SESSION

Council Member Scott left the meeting at 5:33.

At 5:34p.m. Council Member Kulesza moved to return to open session. Council Member Witte seconded the motion. In a voice vote all members voted aye and the motion passed.

Additional City staff present were Michelle Groenevelt, Community Development Director; Jerry Summers, Chief of Police; Dennis Coyle, Parks and Recreation Director; John Anderson, Airport Manager; Anne Kantola, Library Director; Betsy Roberts, CH2M Hill City Engineer; Racquel Thackeray, Utility Billing Specialist; and BessieJo Wagner, City Clerk.

REPORTS

Lindley Kirkpatrick, City Manager, confirmed Council participation dates for the Public Works Director interviews. He also updated the Council on the status of the employee annual evaluation process, stating that all evaluations had been administered. The Council needs to come to a consensus on the retreat date. After a brief discussion the Council agreed to March 5, 2010 with a preference to a morning session.

Council Member Delaney asked for clarification on the DEQ leak test request. Betsy Roberts, Engineer CH2M Hill, stated that it was something new that DEQ was requesting. Ms. Roberts indicated that the process would be very expensive and the City would be meeting with DEQ to discuss other options.

Council requested that staff provide the criteria used in the "Request for Proposal" for concessionaires prior to those agreements coming to Council for approval.

Mayor Bailey commented that the aging report seems to get longer each month and Council would like for staff to address a way to streamline how the City addresses late payments. Currently there was not a process in place for all late payments. There was emphasis put on delinquent Hangar Leases.

Council Member Scott rejoined the meeting via phone at 5:57 p.m.

Mayor Bailey led the audience in the Pledge of Allegiance at 5:59 p.m.

Mayor Bailey approved the agenda as amended on February 8, 2010.

PUBLIC HEARING

AB 10-42 CUP-09-06 507 North 3rd Street – Old Town Station – CANCELLED

It was acknowledged by Council that this public hearing was cancelled due to improper notice of the public hearing.

AB 10-40 Continuous Utility Billing -Ordinance Adoption establishing continuous utility billing - Resolution Adoption setting turn-on/turn-off fees

Tim Swanson, Interim Public Works Director, stated that the proposed ordinance will require that all customers pay the water and sewer base rate if services are available to them. The customer may choose to have their water turned off and there will be no reduction in the rate. This practice is common in municipalities throughout the country. It spreads the burden of the DEQ mandates and total system debt to all customers. If approved, this change will be phased in over the next cycle of on/off for the user. Staff will notify all customers that when the water is turned on/off again, the base rate will continue to be charged. This would allow customers to plan for the continuous billing.

Mr. Swanson also stated that the proposed Resolution simplifies the turn-on/turn-off fees. Currently, the fee to turn-on service is \$30 and the fee to turn-off service is \$100. The new fees will be \$65 to turn-on and \$65 to turn-off. Additionally, the proposed Resolution allows the City to charge additional fees for service outside normal business hours or in cases where added costs are incurred by the City due to snow or debris blocking the water meter.

Mayor Bailey opened the Public Hearing on Continuous Utility Billing at 6:04p.m.

Richard Taplin, Assistant Manager at Ponderosa Park, stated that the park had 7 meters that they have the water turned off for the winter months. He pointed out that it would be a 35% increase to their annual water costs if the ordinance passes. He stated that it would equal the cost of one part-time employee. He stated that high school and college students depend on the job for college tuition. It was Mr. Taplin's opinion that if the City chose to go to the continuous billing, then the base rate for water should go down.

Gary Smith, 645 Woodlands, a McCall full time resident, stated that he has not asked that the water be turned off at his cabin; however it was his opinion that it would be a bad precedence to base the decision for continuous billing on revenue issues.

Albert Cober(?)1503 Louisa Avenue stated that they turn off the water in winter to winterize the house and minimize expenses. He stated that he had no complaints with the \$100 to turn off water even though it only takes the public works department 5 minutes. He suggested that customers pay penalty for last minute service. In his opinion if the City needs to charge a fee it should be a reasonable fee, he did not think that almost \$80 a month was reasonable.

Hearing no further comments, Mayor Bailey closed the Public Hearing on Continuous Utility Billing at 6:13p.m.

Council Member Delaney re-iterated that the primary cost of the water was not in the use but in the infrastructure.

Mayor Bailey reiterated that the cost was in the infrastructure and that it was the Council's duty to do an annual review of the various rates charged by the City to ensure that sufficient funds are collected to service all residents. He explained that in order for the City to fund the projects that need to be done to maintain the City's infrastructure, taxes and rates have to be increased in order to cover these costs. Mayor Bailey also spoke of the cost of replacing Lift Station 8. He stated that this change would generate approximately \$90,000. He also stated that the Council understands the concerns of the part-time residents, but if they do not consider this change they may have to increase rates.

Council Member Kulesza stated that it is an effort to distribute the cost to all users to prevent increases. He also stated that DEQ requires additional systems that raise the cost of fees.

Mr. Kirkpatrick stated that previously the Council had discussed the issue of continuous utility billing in the context of residential users and the issue of other users such as the parks and schools had not been discussed. He also stated that staff had prepared some additional documents for the Council to consider.

Mayor Bailey suggested that the item be tabled until the Council has an opportunity to review the additional information and options further. Council Member Delaney stated that her opinion was that if the infrastructure has to be there why the Council would make any exceptions. Her thoughts were such that if the infrastructure has to be there then both parties, public and private, should share equally in the cost; however there could be a compelling argument for reasons why one party could be exempt of paying and therefore warrants further discussion. Council Member Witte stated that it needs to be determined if it is worth tax payers money to subsidize these other entities. Council Member Kulesza stated that he agreed with Mayor Bailey, the matter should be tabled so that the Council could review the additional information.

Tim Swanson stated that when he spoke with other communities who have continuous utility billing, there were no exceptions made.

Mayor Bailey moved to table action on the resolution until March 25, 2010. Council Member Kulesza seconded the motion.

Discussion on the motion

It was clarified that the resolution needed to be tabled due to the reason for the public hearing was a change in fees.

In a roll call vote Mayor Bailey, Council Member Kulesza, Council Member Delaney, Council Member Scott, and Council Member Witte all voted aye and the motion passed.

Council Member Delaney asked about the number of whereas clauses in the ordinance and why the ordinance looked different than previous ordinances. Mr. Nichols, City Attorney, clarified the need for the legislative history for this type of ordinance, he also stated that Council can change the language if they choose to and can even choose to eliminate some of the whereas clauses if they so desire.

The general consensus of the Council was to wait on the ordinance until March 25, 2010 to consider some of the options that were presented during the meeting.

AB 10-41 CA-09-01: Code Amendment – Lake Frontage Minimum for Residential Zones

Michelle Groenevelt, Community Development Director, gave a brief explanation of the proposed code amendment. She stated that the amendment originated with the Planning and Zoning Commission, and that it proposes a minimum lake frontage dimensional standard. She also stated that the rezone was intended for future lot splits, to prevent narrow pieces of land that come down to the lake front. She stated that staff considered what it would mean for existing lots that are less than 60 feet of frontage and concluded that it would create some non-conforming lots. She stated that those lots would still be able to build a single family home and all the accessory dwellings. Ms. Groenevelt stated that there was some confusion amongst the community about whether it would create non-conforming structures, she state that it would not.

Council Member Witte clarified that if they do not meet the requirements for that particular zone then they get bumped to the next conforming zone. Ms. Groenevelt clarified that it was based on the square footage of the lot.

Council Member Kulesza wanted to know what the rationale for 60 foot minimum was. Ms. Groenevelt responded that the Commission looked at what was comfortable in proximity of the neighbor. She also stated that currently there was no statute used as part of the reasoning of the Planning and Zoning Commission.

Mayor Bailey opened the Public Hearing on Code Amendment – Lake Frontage Minimum for Residential Zones at 6:54 p.m.

Rick Fereday spoke in support of the ordinance change.

Don Clark, Warren Wagon Road, spoke for William Wilmore of whom he sold a home to. He stated that his client’s concern was that he has a 50 foot lot that was conveyed by auction by the state, would now be labeled non-conforming. He stated that he would like some comfort with what that will mean if he chooses to market the property in the future. He wondered if it would sell for the same amount of money with such a label. Mr. Clark suggested that his client contact an attorney.

The other personal concern that Mr. Clark had was that many of the 50 foot lots originated from 100’ foot splits. He stated that with this change it would make it a problem to split a hundred foot lot. He did not understand the reason for the ordinance. He stated that density was already regulated by Planning and Zoning and by the sewer district. He requested that the Council take reconsideration of the ordinance, as an element of fairness. He also stated it could result in litigation issues and be considered a “taking.”

Phil Ybar requested the Council to consider a smaller lot size; he was opposed to a 60 foot but not opposed to 50 foot. He inquired as to whether there was a study done as to how many lots

were 100+ for those who may want to split in the future. He believes it would affect many lots in a negative way.

Phil Feinberg, Planning and Zoning Commissioner, clarified the confusion in the paper, stating that the 60 foot reasoning was the difficulty pulling in a boat, and the close proximity of the other homes. He stated that there were currently no restrictions, and did not feel it was out of the ordinary. The ordinance would prevent receiving applications for a 35 foot frontage.

Council Member Delaney verified that the rezone was a Planning and Zoning unanimous decision.

Don Clark stated the department of lands has specific requirements for docks, and his concern was the value of the lake front, and this ordinance would be a “taking.”

Bill Nichols, City Attorney, stated that he disagreed that it would not be considered a taking.

Dan Krahn, 906 Ann, was concerned with the terminology of a small number of those affected. He stated that he did not feel that 30% was a small number of people affected. He stated that the price of lake frontage property was \$20,000 a lineal foot and questioned whether this was the best time for this discussion. He state that the state lease lots are in the 50 foot range, and historically the other lot sizes were even smaller.

Ms. Groenevelt clarified that 30% of the property owners would not be non-conforming lots. She also received calls from attorneys clarifying the ability to build. As part of the 2006 new Planning and Zoning code, the previous code did not allow the depth to be more than 3 times the width. So when the code was revised, in 2006, there was no minimum for Lake Frontage. She also re-iterated that non-conforming lots had nothing to do with non-conforming structures. She also stated that some of the long lots would still be able to split just not into long skinny lots.

Hearing no further comments, Mayor Bailey closed the Public Hearing on Code Amendment – Lake Frontage Minimum for Residential Zones at 7:24 p.m.

Council Member Scott disclosed that she owns lake front property and asked the Council if she should recuse, the consensus was that the Council did not see it as an issue.

Council Member Kulesza stated that since the City did not currently have a lake front standard, it was reasonable to regulate the frontage. He did not feel it was under the radar; however it makes sense to table the issue to give people an opportunity to learn what the true issues are and weigh in on the issue.

Council Member Delaney cautions that City business needs to happen more than three months a year and be sure that the Council does not restrict when they make decisions

Council Member Kulesza clarified the requirement of when to send notices to the property owners and this was not an issue where statute requires those notices. Ms. Groenevelt stated that

the process started at a code amendment workshop during the summer. She also stated that when deciding on 60 foot versus 50 foot, the Commission looked at the density.

There was discussion as to how the Planning and Zoning Commission came to their decision.

The Council asked if there were any time constraints for the passage of the zone change. Ms. Groenevelt stated that the process needed to continue moving forward.

Council Member Kulesza would like for those property owners that did not know of the ordinance change to weigh in on the issue. Council Member Witte would like more analysis as to why the 60 foot frontage was the best.

There was discussion of the different options for Council.

Mayor Bailey directed staff to re-notice the code amendment for an additional public hearing.

Concern with prolonging the decision for the minimum standard was that there was not a current code to control the lake frontage splits at that time.

Council directed staff to re-notice the public hearing in 30 days, March 11, 2010 and provide more information as to what the frontage minimum should be.

PUBLIC COMMENT

Mayor Bailey called for public comment at 7:58 p.m.

Hearing no comments, Mayor Bailey closed the public comment.

CONSENT AGENDA – NEW BUSINESS

Council Member Scott left the meeting 7:58 p.m.

Staff recommended approval of the following items:

- Minutes January 28, 2010
- Warrant Registers printed on 2/5/2010
- Payroll Report for Period ending 1/22/10
- AB 10-37 Alcohol Catering Permits
- AB 10-38 Alcohol Beverage License Report

Council Member Kulesza moved to approve the Consent Agenda. Council Member Delaney seconded the motion. In a voice vote all voted aye and the motion passed.

BUSINESS AGENDA

Mayor Bailey called a recess at 8:02 p.m.

Mayor Bailey reconvened the meeting at 8:07 p.m.

AB 10-43 Business Park Planning & Design Charrette: Conclusions, Recommendations and Framework Plan Presentation

Harmony Design joined the meeting via phone.

In the fall of 2009, Harmony Design and Engineering was contracted by the City of McCall to facilitate a design charrette and formulate a conceptual plan for a potential Business Park development in the City's Area of Impact. The report is a comprehensive summary of the Business Park Planning and Design Charrette which took place September 29th through October 1st, 2009. The report outlines the events leading up to the charrette, the public meetings and workshops, and the post charrette development of a final Framework Plan, recommendations for Business Park design and development standards, engineering cost estimates for utilities, next steps, and funding sources.

Michelle Groenevelt, Community Development Director; Betsy Roberts, City Engineer; members from Harmony Design and Engineering; and Carol Coyle, Grant Coordinator gave a presentation of the planning charrette process.

The Business Park Report will be presented at the February 25, 2010 meeting for adoption as a planning document for the City of McCall.

Public Comment

Bob Burnop, property owner, stated that he thought the business park was a positive thing. He also shared concern of other property owners on Samson Trail. He stated their concerns were with possible traffic issues.

Mayor Bailey commented that he thought the Charette process was very productive and valuable.

Council Member Delaney and Council Member Witte recused at 9:31 p.m.

Council Member Scott rejoined the meeting via phone at 9:32 p.m.

AB 10-44 Adoption of Rezone Ordinance - ZON-06-03: Crossbar Rezone

This agenda item is the second reading of the ordinance that will enact the rezone for the Crossbar property. The final reading of the ordinance was postponed until the present meeting to allow time for the associated Development Agreement to be signed. The signed development agreement is included in this packet.

Council Member Kulesza moved to read by title only for the second time Ordinance No. 872. Mayor Bailey seconded the motion. In a roll call vote Council Member Kulesza, Mayor Bailey, and Council Member Scott all voted aye and the motion passed.

The second reading of Ordinance 872 was read by Mr. Wagner, by title only.

Council Member Scott left the meeting at 9:35 p.m.

Council Member Delaney and Council Member Witte rejoined the Council at 9:35 p.m.

AB 10-45 Appeal of Treasurer's Denial of Utility Adjustment Request

This request was denied based upon the opinion that a reasonable person does not expect to turn on services and not have some kind of monthly billing (base rate). The Customer originally requested to have all monthly charges deferred and then changed his request to have half of the total amount.

Mayor Bailey asked if the information given to the customer was sufficient for them to know what they were expected to pay. Racquel Thackeray, Utility Billing Specialists, stated that he received and signed the contract prior to having the water turned on.

Council Member Delaney felt that it was reasonable that someone should expect to pay for services when they had signed the contract.

Council Member Delaney moved to uphold the Treasurer's denial of the adjustment request. Council Member Witte seconded the motion.

Discussion on the motion

Mayor Bailey stated that there is a need for more flexibility in this type of situations.

In a roll call vote, Council Member Delaney, Council Member Witte, and Council Member Kulesza all voted aye, Mayor Bailey voted no and the motion passed.

AB 10-34 Airport Hangar Lease Rate upon Transfer Memo

John Anderson, Airport Manager, stated that he put together a memo to assist the Council with the Hangar Lease issues.

The Council had a discussion as to a difference of opinions of the interpretation of Paragraph 37 of the lease agreements. Council also discussed the issues with the existing leases and the need for a streamlined lease.

General Consensus of the Council was to further consider the information of this memo regarding decisions of these leases and pursue additional information.

AB 10-35 Sawtooth Flying Service, Inc - New Lease Agreement

Mr. Anderson stated that Mike and Leslee Dorris, dba Sawtooth Aviation, have requested a new lease agreement. When they purchased the building in 2009, they did not have time to wait for a new lease agreement to be considered. The proposed lease agreement would run from March 1, 2010 to February 28, 2030 with four, five year options to renew. The lease rate would be \$0.35 per square foot for the entire lease property of 10,000 square feet. If the hangar is later sold, the lease would be adjustable to the then current rate as set by City Council. The lease rate is

adjustable by the CPI annually and is further adjustable to the then current rate at 10 years and every five years thereafter. This proposal has been reviewed by the Airport Advisory Committee and is forwarded to Council with their recommendation for approval.

The Council stated that the lease needs to be cleaned up and brought back with the exhibits properly labeled and an added paragraph dealing with the minimum standards requirements.

AB 10-36 Wright Hangar 203 Lease Assignment

Mr. Anderson stated Steve Wright, owner of hangar 203 has, for estate planning purposes, assigned his lease agreement and hangar ownership to Middle Fork Properties LLC of which he is the owner. The Airport Advisory Committee has reviewed the Attached Assignment of Lease and recommends it to City Council for approval as a transfer between legal entities of the same owner and they further recommend that the lease rate not be changed. This lease was entered into March 1, 2003, therefore, in three years the City will need to adjust the lease base rate, as the lease is subject to the rate adjustment at 10 years, every five years thereafter, with annual CPI increases every year. In the current lease rate fees, the annual lease fee would increase from \$1,277.30 to \$2,493.75.

Mr. Nichols stated that the following documents are good to have referenced in the agreement application, not necessarily part of the agreement: Articles of organization, certificate of organization and the operating agreement to verify who members of the organization are. Council asked that the Lease Assignment be brought back with the documentation stated above.

AB 10-39 Hangar 563 Assignment

Mr. Anderson stated that Hangar 563 is one of the new East Hangar Project hangars and was acquired by McCall Hangar LLP consisting of Paul & Lori Jorgensen lessees with Mark McClellan and Anne McDonald CC. Their original intention was to hold the hangar for a period of time as McCall Hangar LLP, and then transfer all of the ownership to Paul & Lori Jorgensen. The attached lease assignment transfers the ownership to the Paul & Lori Jorgensen Living Trust. It was anticipated that this transfer should be approved without a modification to the lease rates for the reasons outlined in the memo titled Lease Rate Analysis January 27, 2010.

Council requested the Certification of the Living Trust and then bring back the assignment for approval.

Council Member Scott rejoined the meeting via phone at 10:42 p.m.

AB 10-46 Public Forum regarding form of government issues

Council Member Delaney and Council Member Scott met and came up with ideas to present to the Council. It was discussed that an open web comment for one or two weeks would be available for the citizens of McCall to make comments. Council would then collect the information. Every comment would be read and considered by City Council. Following the comment period, responses would be posted on the issues raised by the comments.

The Council also discussed that the subject matter would be something to the following:

What should Council, staff or community do to maximize the effectiveness of the Manager/Council form of government?

The Council also discussed that there would be specific questions for citizens to answer so as to have sufficient data on what the community's concerns are. The information will be posted on the City's website and in the paper.

COMMITTEE MINUTES

The Council received copies of the following minutes:

- Environmental Advisory Committee – November 17, 2009
- Environmental Advisory Committee – December 15, 2009
- Planning and Zoning Commission – December 1, 2009
- Airport Advisory Committee – January 7, 2010

EXECUTIVE SESSION

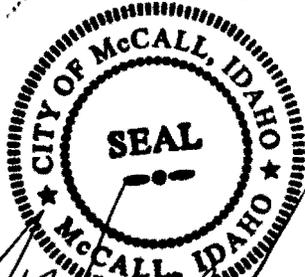
At 11:14 Council Member Kulesza moved to go into Executive Session for Litigation – Pursuant to Idaho Code §67-2345(1) (f) to communicate with legal counsel for the public agency to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated and Land Acquisition pursuant to Idaho Code §67-2345(1) (c) to acquire an interest in real property which is not owned by a public agency. Council Member Witte seconded the motion. In a roll call vote Council Member Kulesza, Council Member Witte, Mayor Bailey, Council Member Delaney, and Council Member Scott all voted aye and the motion passed.

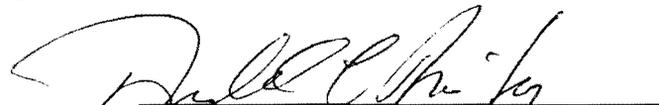
ADJOURNMENT

Without further business, the Mayor adjourned the meeting at 11:50 p.m.

ATTEST:


BessieJo Wagner, City Clerk




Donald C. Bailey, Mayor

MINUTES

McCall City Council
Regular Meeting
Legion Hall (McCall City Hall - Lower Level)
February 11, 2010

The Executive Session portion of the February 11, 2010 minutes were amended on April 22, 2010 to ensure compliance with the requirements of IC §67-2344 (2).

EXECUTIVE SESSION

At 4:35 Council Member Kulesza moved to go into Executive Session for Litigation – Pursuant to Idaho Code §67-2345(1) (f) to communicate with legal counsel for the public agency to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated. Council Member Witte seconded the motion. In a roll call vote Council Member Kulesza, Council Member Witte, Mayor Bailey, Council Member Delaney, and Council Member Scott all voted aye and the motion passed.

Council discussed litigation issues and possible strategies and solutions.

EXECUTIVE SESSION

At 11:14 Council Member Kulesza moved to go into Executive Session for:

- Litigation – Pursuant to Idaho Code §67-2345(1) (f) to communicate with legal counsel for the public agency to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated; and
- Land Acquisition pursuant to Idaho Code §67-2345(1) (c) to acquire an interest in real property which is not owned by a public agency.

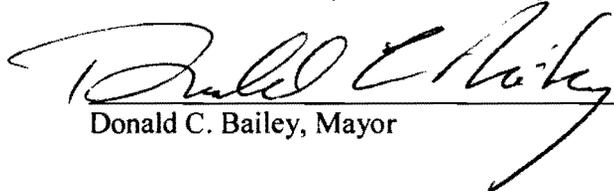
Council Member Witte seconded the motion. In a roll call vote Council Member Kulesza, Council Member Witte, Mayor Bailey, Council Member Delaney, and Council Member Scott all voted aye and the motion passed.

Council continued discussion on litigation issues and also discussed a possible land acquisition for the City.

ATTEST:


BessieJo Wagner, City Clerk




Donald C. Bailey, Mayor