

MINUTES

**McCall City Council
Regular Meeting
Legion Hall (McCall City Hall - Lower Level)
January 22, 2009**

Agenda

Call to Order and Roll Call
Executive Session
Public Comment
Consent Agenda
Business Agenda
Committee Minutes
Executive Session
Adjournment

CALL TO ORDER AND ROLL CALL

At 5:30 p.m. Council Member Bailey, Council Member Delaney, Mayor Kulesza, Council Member Scott and Council Member Witte answered roll call.

In addition to the Council Members, present for the executive session were Lindley Kirkpatrick, City Manager and Bill Nichols, City Attorney.

EXECUTIVE SESSION

At 5:33 p.m. Council Member Mayor Kulesza moved to go into Executive Session for litigation pursuant to Idaho Code §67-2345(1)(f). Council Member Bailey seconded the motion and in a roll call vote, all members voted aye and the motion passed.

CALL TO ORDER

The Council returned to open session and Mayor Kulesza called the regular meeting of the McCall City Council to order at 6:05 p.m.

In addition to the Council Members, present for the regular meeting were Lindley Kirkpatrick, City Manager; Bill Nichols, City Attorney; John Anderson, Airport Manager; Michelle Groenevelt, Community Development Director; Carol Coyle, Grant Coordinator; and BessieJo Wagner, City Clerk.

Mayor Kulesza amended the agenda adding an item to the end of the Business Agenda relative to the negotiations with the Payette Lakes Recreation Water and Sewer District. Mayor Kulesza led the audience in the Pledge of Allegiance at 6:08 p.m.

PUBLIC COMMENT

Mayor Kulesza called for public comment at 6:09 p.m.

Bruce Stuart – Representing McCall Jobs of '09, a group of people that are trying to create new jobs in McCall. He stated that he was against including vending machines under Formula Retail in the City ordinance. He also asked that with the code amendments, the Council consider amending the current code to reflect that formula retail be allowed to be 50% of the businesses in McCall as opposed to the current 10% the ordinance allows. He stated that there were currently businesses in McCall that fall under the ordinance, and are not in compliance with the ordinance. His opinion was that by changing the name of a franchise does not fulfill the requirement of the current ordinance. His examples were that there is a UPS store, Curves, multiple real-estate offices that have joined affiliations with franchises, and the Best Western Hotel that are all franchises. He stated that everything that is stated in the ordinance to describe a franchise, these businesses reflect. The City does not have a current number that would allow, by ordinance, a Holiday Inn and Super 8 in the same town.

Mr. Stuart went on to say that three of his family members have had to move out of the area due to there being no jobs. He feels that by limiting what businesses can come to McCall, in the current economic situation, it is very difficult to not have a franchise or other businesses here. An example he gave was that having multiple businesses, and being slow during the off seasons, the money has to be made up for else where. He feels that franchises would let that happen and at a 50% rate the City could still maintain the uniqueness of what it needs.

He asked that the Council amend the ordinance to allow the 50% of the businesses be franchises that he felt was put forth to the City Council originally. He stated that it was changed by, what he believes, three people that were set up for a committee to change it, and when it brought to the City Council and voted upon, it was seconded by a person who owned a business who would profit by the 10% restriction. He continued saying that by Idaho Statutes says that the person should have stated a conflict of interest. He believes that the ordinance is not even legal because he feels it was passed illegally with conflict of interest and not enough public notification.

Mike Anderson – Representing Hangar Solutions – He stated that he wanted to bring up the sewage issue out at the airport. He stated that there is a lack of public restrooms facilities at the airport. The hangars at the airport that have restroom facilities use temporary holding tanks as an interim solution. The first system was built in 1990. He stated that when he originally built his hangar in 1990, he negotiated to put a septic system in as there was no sewer system available. The alternative proposal by the City Administrator was to put in a holding tank because it was only supposed to be for a short time until there would be sewer service at the airport.

Mr. Anderson went on to say that during the 1990's there was design and partial construction of a sewer connector between Krahn Lane and the main on Mission Street that would provide gravity flow from the east side of the highway across the airport to the sewer main. The portion that was constructed was to serve the existing hangars at the airport and tie in to the connector on Mission Street. Mr. Anderson stated that at that time he was part of the Airport Advisory Committee, and there was allegedly about \$400,000 set aside for the purpose of constructing that part of the sewer service. He stated that the \$400,000 mysteriously cannot be found at this time.

He stated that it was his understanding that there was currently a fund set aside for some future construction. He expressed concern that at the rate of construction cost that there will never be enough money to complete the project.

Mr. Anderson stated that in 2006, Hangar Solutions built thirty-two hangars, and relocated one large hangar to provide access to the sewer project. As part of the project, Hangar Solutions proposed the construction of two public restroom facilities that Hangar Solutions would have given to the City. One of the facilities was built, and it was the plan to use a holding tank while waiting for the completion of the sewer project. The holding tanks for the public restrooms and for the relocated large hangar were denied by Central District Health. He stated that Central District Health did not want any more holding tanks; they wanted the sewer system completed. He stated that he realized that it was not economically feasible at this time.

Mr. Anderson went on to say that some time in 2006; Hangar Solutions proposed a septic system to be installed at the end of the existing dry sewer line that was a portion of the overall sewer plan. They applied for a permit in August of 2007 and went through some testing. He stated then in 2008, after Hangar Solutions thought they were going to be ready to start construction, Central District Health came back and said that they wanted an engineering study for all the possible current and future flows. He stated that Toothman-Orton, the City's airport engineer, made a proposal of a maximum of a \$10,000 fee to perform the study and guarantee receipt of a permit to construct the system.

Mr. Anderson continued by stating that in October of 2008, Walt Lee, the Chairman of the Airport Advisory Committee, sent a letter to the City outlining the facts and requesting some action. He stated that to date no action had taken place. He requested that the City take some action. He stated that there is proposed development south of the existing hangars which, at some point, will require or contribute something toward the completion of the sewer line. According to his information, that is not something that is likely to happen in the immediate future. He stated that he had a petition from 50 tenants and hangar owners, who support the request that the City do one of two things – either authorize Toothman-Orton to proceed in a timely manner and fund that contract, or challenge the Central District Health requirement that a full engineering study be done.

He stated that when Hangar Solutions applied for the septic system permit, they calculated the total historic water flow, water that was sold to the tenants at the airport and assuming that the human increment to the water flow would be a small percentage, they felt that a reasonable size of the septic system could be determined. Central District Health determined that they see it as a permanent alternative to the sewer line that would be built across the airport; therefore they want a study that will calculate all current and all possible anticipated future flows, and size the system accordingly. His opinion was that it was an unreasonable request and that the City should at some point contest the Central District Health decision and the City should propose a more reasonable solution.

Mr. Anderson handed out to the Council a copy of Walt Lee's letter and the permit application (attached).

Wendy McPherson, Sunset Video, expressed her support of the ordinance against formula retail to include vending machines. Ms. McPherson stated that the Red Box Video vending

machines are located in several locations in Ontario, Oregon. She stated that these vending machines put video stores out of business, and her business would not be able to compete with them. If the Red Box Video vending machines were allowed to come to McCall then it would put three video stores out of business. She asked that the Council approve the amendment to include the vending machines for formula retail in the ordinance.

Debbie Keith, Mountain Movie Magic, stated that the Red Box Video vending machines do not offer any jobs for the community. With the current three stores there are at least fifteen people employed. She was also in support of the ordinance.

Cameron Stuart – expressed his opposition to the ordinance against formula retail. He stated that he understands how people would think that the Red Box Video vending machines would rid people of jobs. The Red Box Video vending machines is not his only reason for wanting franchises in McCall. He stated that franchises would create jobs. He also stated that with the Red Box he would be able to afford to rent a movie as the fee is lower than at a video store. He stated that he has a number of friends who are unemployed due to the lack of available jobs in McCall. He feels that if franchises were allowed to come to McCall there would be more job opportunities. He stated that he does not want to see a bunch of fast food places and Wal-Mart popping up; however he would like to be able to go to a more affordable place to get a burger. He would like to see franchises come to McCall for job opportunities and for people with low budgets.

Hearing no further comments, Mayor Kulesza closed the public comment at 6:24 p.m.

CONSENT AGENDA

Staff recommended approval of the following items:

- Warrant Register printed on January 16 & 22, 2009
- Payroll Report for Periods ending December 26, 2008 & January 9, 2009
- AB 09-15 Alcohol Beverage Catering Permit
- AB 09-09 Arbor Day Proclamation
- AB 09-16 Winter Carnival 2009 Event Summary
- AB 09-17 Recreational Trails Program grant application through Idaho Dept. of Parks and Recreation for pathway connection on Spring Mountain Boulevard
- AB 09-18 Land and Water Conservation Fund application through Idaho Dept. of Parks and Recreation for purchase of USFS property adjacent to Riverfront Park
- AB 09-21 Idaho Power Franchise Fees Ordinance 862 Summary Approval

Some discussion took place to clarify the warrant register.

Council Member Bailey stated that it is his opinion that Sterling Codifiers charges the City way too much money for doing almost nothing. He does not like the format they use and he stated that Sterling changes the format to fit their needs. He suggested that some other codifier do the work or that possibly City staff do the work. He feels that their fees are way too high. Council

Member Delaney asked for a cost analysis to be done for doing the work in house. Council Member Bailey stated that he would like the money to stay in the City even if it means hiring a part time person to maintain it. Council would like a report on the analysis for the second meeting in March.

Council Member Delaney moved to approve the Consent Agenda as amended. Council Member Bailey seconded the motion. In a roll call vote, all members voted aye and the motion passed.

BUSINESS AGENDA

AB 09-20 Airport Advisory Committee Annual Report to City Council

Walt Lee, Chairman of the Airport Advisory Committee, presented the annual report to Council. The full report was published with the Council Packet on the web site and is available at City Hall for review.

Council Member Delaney asked in relation to noise reduction, has it always been the airport's policy to use runway 16 for take offs and runway 34 for landings. Mr. Lee stated that it was restated in his report so it was not forgotten. Also if weather does not permit regular takeoffs then aircrafts adjust accordingly. Council Member Delaney also asked the meaning of appropriate use of radio discipline. Mr. Lee stated that it was to ensure that the aircraft is on the correct frequency.

Council Member Witte asked if there is a way to monitor how many aircraft operators that come to McCall abide by the suggested standards. It was stated that there is no way to know due to McCall having an uncontrolled airport.

Mayor Kulesza asked what determines if the aircraft is in compliance to the noise reduction standard. Mr. Lee stated that there is really no way to tell. Mayor Kulesza asked that other than a tower or voluntary action, is there any recourse that the City has against those who violate the standards. Mr. Lee stated that there is none. Council Member Delaney commented that other pilots will radio and apply "peer pressure" when they see others out of compliance.

Council Member Delaney asked about the precision approaches what has changed, and was it due to better technology. Mr. Lee responded that it was a better approach due to technology that was being attempted. Originally there was a crew hired to do data collection, and then the FAA, even after approving this crew, stated that they wanted FAA staff, to do the data collection. Mr. Lee stated that they are working through it. The redefinition of the runway safety zone that was at the plat stage, and now there are points that need to be addressed. Council Member Delaney asked if the benefit of the precision approach was that more people can get in to the City during the winter via airport. Mr. Lee confirmed that after discussing with operators of larger planes, they were diverting to other airports. With lower minimums, a better way to get in, they would have landed in McCall. Council Member Scott commented that there are a fair number that aim for McCall in the winter and then end in Boise instead.

Mayor Kulesza thanked Mr. Lee for the report, stating that it was well written and to the point.

Mayor Kulesza asked clarification of the split percent of back country and charter. Council Member Scott stated that it was about a 50/50 percent split that end up on a back country strip as opposed to a city like Boise.

Mayor Kulesza stated that in the report it was stated that McCall is currently a Category BII airport but may be headed toward CII operations. He asked if there are any figures for 2006 or 2007 to determine the current trend of operations and does the turn in the economy affect the trend. Mr. Anderson responded that some of the data is scattered and it is difficult to determine whether it is CII, CIII or BII with some of the aircraft. There is some data that the state has. The state is looking at it in their State Airport System Plan and the Environmental Assessment (EA) contractor has the same data and will be looking at it. With the agreement with McCall Aviation, they track airplanes that come in, however some are only the ones that they make contact with. There is also an electronic data base with FAA of aircraft that have filed flight plans into McCall. There really isn't any concrete way to get those numbers 100% accurately.

Mayor Kulesza asked about the projection for changing the category from a BII to a CII, as the Master plan projected that to be some time around 2017-2019. Mr. Lee stated the timing is just an estimate and involves economic growth and the number of people living in McCall. With growth and increase in incomes come larger jets.

Council Member Witte asked that once the airport hits a certain number of operations does the FAA give some time frame in which to come up to compliance or is there repercussion for not being in compliance. Mr. Anderson responded stating that in looking at the BII and the requirement to move the taxiway in McCall, the FAA is pressing airports around the country to do the same. There isn't a timeline, but if the airport is not making a good faith effort to make the change, then the FAA will review the progress and act accordingly.

Mayor Kulesza asked if that is why the FAA is funding the EA due to the airport being out of compliance for BII. Mr. Anderson confirmed stating that taxiway separation is one of the big safety checkmarks for FAA.

Mayor Kulesza asked if the Airport Advisory Committee has discussions on the long range vision and need for McCall and the valley, and where the best place to have the airport would be. Mr. Lee stated that the Committee does have such discussion and recently they discussed Idaho State Airport System Plan and they are currently doing the study to review. One of their specific tasks is they look at the airports in Valley County. Mayor Kulesza feels it would be valuable to look at future needs.

Mayor Kulesza stated that there was a proposal for a Through-the-Fence (TTF) agreement received in 2007 at which time the Mr. Anderson was asked to look into the possibilities of the agreement. Mr. Anderson stated that it was actively pursued through the year of 2007, and then at the end of 2007 it was reviewed by attorneys and developers and then went dormant until about August of 2008. Mayor Kulesza stated that, through what he has read, over the last 20 years the FAA has not been advocating TTF proposals, there have been some exceptions. Mr. Anderson stated the FAA Advisory Circular and guidance both say that they discourage TTF agreements. The FAA has stated that if an airport joins in a TTF agreement that is not agreeable to the FAA, it will no longer provide funding for that airport.

Council Member Delaney asked if some of the cities that have done residential agreements and then their grant funding was pulled or some how they were reprimanded by FAA; did they just not realize what could happen or were they getting enough financial benefit that they did not care if they lost the FAA funding. Mr. Anderson stated that there were very few instances where the airport did not care, but for the most part the city did not fully understand the concept.

Council Member Bailey asked where in a FAA document it says that the FAA must approve a TTF agreement. Mr. Anderson stated that it says in their presentation that it would be very risky to approve such agreement without their approval.

Council Member Bailey asked if any of the FAA documents does it define what parity means to the FAA. Mr. Anderson stated that he could not find a definition, however he has asked the FAA point blank what parity means and their response was that the same lease rate has to be charged for the through-the-fence hangars as would be charged for on airport hangars.

Mayor Kulesza stated that even if the law does not require FAA to approve the agreement, it is still risky to proceed without their approval or written concurrence. Council Member Bailey stated that he could not even find out how to obtain the FAA's approval. He stated that when he has worked with FAA document previously there is always very specific instructions and was surprised that he could not locate any specifics on the TTF.

Council Member Witte asked about the sewage issue and that the hangar owners are being charged sewer and water fees. Mr. Kirkpatrick clarified that these fees are for the service that the City pumps the holding tanks as they need to be emptied, so they receive a service for the fee they pay.

AB 09-19 Interest in taxiway Environmental Assessment Planning Advisory Committee

The Council discussed that the intent of the group is to have a core group that would hear from the contractor and then give feedback as appropriate. The contractor would be responsible for the meetings. Toward the end of the process there will be a formal opportunity for the public to comment and will be recorded by a court recorder and these comments will then be responded to.

Council Member Bailey thought that members should live within the City or the impact area. Council Member Delaney stated that she felt that as long as the person has some interest in McCall then their input is important. Mayor Kulesza stated that what is important for this committee is that there are diversified backgrounds and opinions, and that the group would have the ability to work together respectfully.

Mr. Nichols clarified that if the committee is a sounding board and give feedback to the contractor, then the contractor would be the one to do some kind of a report for the Council.

Mayor Kulesza volunteered to be part of the committee.

No formal motion needed, there was a general consensus from the Council in favor of the list provided of interested people for members of the Environmental Assessment Planning Committee.

AB 09-14 CA-08-06 & CA-08-07: Omnibus Code Amendments to Title 3, Title 8, and Title 9.
Ordinance amending Title 3
Ordinance amending Title 8
Ordinance amending Title 9

Michelle Groenevelt, Community Development Director, described the potential amendments to the code amendments approved through P&Z, based on input by City Council, staff, City attorney and suggestions from the public. Each potential amendment was published with the City Council Packet.

Council Member Scott wanted clarification of the financial guarantees, Title 9, asking if it meant that the bond is provided earlier and the approval happens prior to recordation. Ms Groenevelt confirmed that would be correct. She also clarified that what is trying to be accomplished through this amendment is if a project wants to start before final plat approval then they need to provide the following four things:

1. The nature and scope of the proposed work;
2. The estimated cost of the proposed work;
3. The schedule for commencement and completion of the proposed work; and,
4. The means of financing the proposed work.

Ms. Groenevelt stated that with the way that the current code is written, if a developer doesn't have accepted infrastructure at final plat approval then they need to provide the assurances. This amendment will ensure that if a project gets started prior to final plat approval, the City will review it and ensure that it is acceptable.

Council Member Delaney stated that it was her understanding that when a large project is staged, like an eight year project, the assurances can be done in stages. Ms. Groenevelt stated that was correct. Council Member Witte then asked if, in that case, it meant that final plat approval was also done in stages. Ms. Groenevelt stated that each phase requires a separate final plat approval. Mr. Nichols clarified at the time that the final plat is recorded everything ought to be done. The final plat is approved months before it is recorded, and at the time that final plat is approved that is when all the construction is ready to go, and it may not be actually built, and that is when financial assurances are needed to ensure that it will be done according to the way the final plat was designed.

Council Member Witte asked for clarification on the approval of final plat with the development agreement. Ms. Groenevelt stated that generally both the final plat and the development agreement are approved at the same time. Mr. Nichols clarified that a subdivision agreement and a development agreement are two different things. The usual way is, if there is a rezone or preliminary plat, which is the time when the development agreement is in place that says in, order to obtain approvals, certain step must be taken and certain entitlements are given. Once the preliminary plat is approved, then as long as that developer comes in with final plat that is substantially the same as the preliminary plat then they are entitled to approval.

It was also discussed that the last phrase which read "...of the final plat approval with the required development agreement." Would be changed to read "...of the final plat approval."

Council Discussion took place on the amendment H, for title 3, to clarify what is "for sale." The intent of the amendment is to eliminate the random sale of vehicles along the scenic route on Third Street. There was much discussion with different scenarios with how this proposed

amendment was written without imposing on the rights of businesses or of private citizens that may reside on Third Street. Council Member Bailey suggested that the amendment for the sale of property be tabled until appropriate language can be determined.

Council Member Bailey suggested that the Council adopt each section or amendment separately. Mr. Nichols suggested that the Council go through each change and indicate whether the change is acceptable or not within each ordinance. If there is one that needs to be changed then propose an amendment and get approval. Then at the next meeting a “clean” document will be presented for adoption.

Council Member Bailey suggested that for Title Three amendment, page 2 of 18, Section 1, it states for definition “DWELLING, ACCESSORY” should be changed to “DWELLING UNIT, ACCESSORY”. Council Member Scott pointed out that the table would also need to be changed to reflect “Dwelling unit” in place of just “Dwelling.” The Council agreed to this change.

Mr. Nichols suggested that for Title Three amendment, page 2 of 18, Section 1 letter (C), it states “walls not more than thirty inches (30”),” should be changed to “walls not more than thirty inches (30”) in height,”. The Council agreed to this change.

Council Member Bailey made the following suggestions for Title 3 amendments:

- In the table 3.3.02 Professional Office all coded C – for conditional use permit. The Council agreed to this change.
- For Table 3.3.03 the Minimum property size per unit, the column marked “R16” be changed from 3500 to 2500. The Council agreed to this change.
- For Section 5, table 3.4.02 – to “Professional offices” the words “and buildings” be added– It was decided to leave it as is.
- To table Section 10, 3.6.03, to give opportunity to add further amendments to this section. Council Member Witte pointed out that the public hearing was closed and to bring up new things other than minor changes would not be appropriate. The Council agreed that this part of the amendment would be tabled.
- For Section 13, 3.7.032, (D) 1. “...the setback will be ten feet (10’).” Should read “...the setback will be a minimum of ten feet (10’) and a maximum of twenty feet (20’).” After some discussion, the Council did not agree with this change.
- For Section 13, 3.7.032, (H), be tabled until new language be determined with Mr. Nichols’ input. The Council agreed.
- Section 16, 3.8.062 change the foot note #2 “Compact parking spaces may be 8 feet by 16 feet.” To “Compact parking spaces shall be 8 feet wide by 16 feet in length.” The Council agreed to this change.

There were no suggested changes for Title 8 amendments.

Council Member Bailey made the following suggestion for Title 9 amendments:

- Section 5, 9.6.067 - eliminate the proposed addition of “(C) Financial guarantees shall be provided prior to recordation of either final approval (i.e. final plat, final plan, etc.) or the development agreement.” The Council agreed to this change.

These suggested corrections to the amendments will be made by staff and a corrected document will be presented to Council for adoption at a future meeting.

Council discussed the public comments for and against formula retail. Ms. Groenevelt clarified that the ordinance only covers formula retail businesses and formula restaurants; it does not include hotels and gas stations. Council Member Scott asked what the original suggested percentage for formula retail was. Council Member Bailey stated that he was going to check through his notes and minutes. He stated that he thought that the Council discussed it, but did not make any changes. Council Member Scott stated that she thought it was changed, that it started higher then someone made the suggestion to make it a smaller number and the rest of the Council agreed.

Added item - Joint Motion with Payette Lakes Recreational Water and Sewer District to continue the court case

Mayor Kulesza moved to direct legal counsel to work with the Board of the Payette Lakes Recreational Water and Sewer District to prepare a joint motion to continue the lawsuit between the City and the Payette Lakes Recreational Water and Sewer District for an additional year. Council Member Delaney seconded the motion. In a voice vote all members voted aye and the motion passed.

COMMITTEE MINUTES

The Council received copies of the following minutes:

- Parks and Recreation Advisory Committee – July 9, 2008
- Planning and Zoning Commission – September 9, 2008
- Planning and Zoning Commission – November 4, 2008
- McCall Improvement Committee – December 11, 2008

Council Member Delaney asked that the committee minutes be submitted more timely.

Council Member Witte commented that she did not think it was appropriate for the Parks and Recreation committee members to be asking other members to ask their friends to lobby for a particular position. She stated that it would be alright to ask for opinions.

EXECUTIVE SESSION

At 9:27 p.m. Council Member Mayor Kulesza moved to go into Executive Session for litigation pursuant to Idaho Code §67-2345(1)(f). Council Member Witte seconded the motion and in a roll call vote, all members voted aye and the motion passed.

Council Member Scott was recused.

The Council returned to open session at 10:45 p.m.

Council Member Bailey made a motion to agree to the Conditional Settlement Agreement with McCall Aviation and authorize the Mayor to sign all necessary documents.

Council Member Witte made a motion to amend the agreement to delete the last sentence of paragraph 4b. There was no second to Council Member Witte's motion.

Mayor Kulesza seconded Council Member Bailey's motion. In a roll call vote Mayor Kulesza and Council Member Bailey vote aye, Council Member Witte voted nay and Council Member Delaney abstained and the motion passed.

ADJOURNMENT

Council Member Delaney moved to adjourn the meeting Council Member Witte seconded the motion and in a voice vote all members voted aye and the motion carried.

Without further business, the meeting was adjourned at 10:55 p.m.




Bert Kulesza, Mayor

ATTEST:


BessieJo Wagner, City Clerk