

# MINUTES

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**McCall City Council  
Regular Meeting  
Idaho First Bank Community Room  
December 18, 2008**

## Agenda

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

## **CALL TO ORDER AND ROLL CALL**

**Mayor Kulesza called the regular meeting of the McCall City Council to order at 5:34 p.m. Mayor Kulesza, Council Member Bailey, Council Member Scott and Council Member Witte answered roll call. Council Member Delaney was absent. A quorum was present.**

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

## **WORK SESSION**

Mr. Kirkpatrick opened the meeting stating that if the Council agreed they would have the discussion of potential public uses between Legacy Park and Brown Park after some general business discussion. All were in agreement.

Mayor Kulesza asked if the Airport Environmental Assessment committee had been determined. Mr. Anderson stated that there are some interested individuals. Mayor Kulesza would like one of the Council on the committee; it will be on the agenda for the January 8, 2009 Council meeting.

Mr. Kirkpatrick referenced the upcoming Council meeting schedule and presented an idea for a change in the way the Council agendas are determined. He stated that the second meeting of the month could be primarily business, and the first meeting of month could be more of a work session type meeting with one or two topics scheduled in a structured format. It could mean that the second meeting of the month would have a heavier agenda.

Mr. Kirkpatrick asked for the Council's feedback on the idea. Mayor Kulesza stated that it could also be that they institute a Council Talk Time, or set a time limit for each topic. Council Member Witte would like to even out the meetings so that each meeting can be adjourned at a reasonable hour. Council Member Scott would also like them to be more balanced. Mayor Kulesza summarized that the Council needs to be more efficient in how the meetings are conducted and have discussion time blocked out at the end of the meeting.

Council Member Bailey had questions about the future meeting schedule and the changes that happen to the schedule from one meeting to the next. There was some discussion to clarify the schedule. Council Member Bailey wants at least a month to review a draft of the "through the fence" agreement prior to it coming to Council. Mr. Kirkpatrick stated that the latest draft was distributed during the summer, and he would get it out to the Council, with any new information ahead of time. Council Member Bailey stated that he had requested that there be an independent evaluation of the fees for the airport and would like to know where that stands. He wants as much information possible to assist with a decision.

Mr. Kirkpatrick updated the Council on the Pancake House issue. He talked with Mr. Williams, the City Prosecutor, to extend the court date. Mr. Kirkpatrick also has tried to talk with Mrs. Bertram about the parking lot issue, to work out some resolution; however, she has not been available to meet. Mr. Kirkpatrick feels that the City can reach some kind of an agreement with Mrs. Bertram without having to go to court. Mr. Kirkpatrick stated that, according to Mr. Williams, Mrs. Bertram has to agree to the continuance before it can be granted. Mr. Kirkpatrick stated that he has spoken with Mrs. Bertram several times since she received the citation. The second time he spoke with her he was very specific that they needed to set a time and date to talk about the issue. Mrs. Bertram did not have a date she was available at that time.

Council Member Scott expressed a concern to ensure that code violations are being treated the same and fair for all, such as the code violation with Dr. Newton. She stated that it appeared like that issue was around for three years prior to the citation and the issue with the Pancake House appeared to be shorter. Mr. Kirkpatrick explained that code enforcement is somewhat complaint driven. He also stated that with the Pancake House some of the issues date back to when the building was first built in 2001. It is not a new issue, and what brought the issues to the top was with the new addition in the summer of 2007, and the new code requirements that were adopted in 2006. However, the stormwater drainage issues date back to 2001.

Council Member Bailey stated that he was on the Planning and Zoning Commission at the time of the development agreement and that per code, the store front had to be dust free and the storm water was also an issue at that time and was not corrected until 2007. Mr. Bailey expressed that there are always two sides to every issue and the City is not entirely at fault on this issue. He stated that he feels that something can be worked out legally and that the City could agree that the parking lot paving issue could be extended.

Mayor Kulesza asked when the agreement was signed; Mr. Kirkpatrick stated that it was signed on February 18, 2008. The agreement that was signed at that time was not a development agreement; it was an agreement to pave the parking lot by a date set in mid-summer. Mayor Kulesza asked if after the date agreed upon had passed, was there any communication from the

Bertrams indicating they were unable to meet the deadline. He wanted to know if there was there any dialogue between the Bertrams and the City after that deadline. Mr. Kirkpatrick stated that the City sent the Bertrams a letter in September, 2008 stating that there were five issues, (four from the development agreement and the unpaid development review fees) to be resolved and asked for a reply as to when they could be resolved. There was no reply from the Bertrams. The citation was issued mid-November, 2008. Mayor Kulesza summarized then that Mr. Kirkpatrick talked with the Bertrams twice after the citation, requesting that some contact be arranged, and at the arraignment, Mr. Williams suggested that Mrs. Bertram contact the City to try to work something out.

Mr. Kirkpatrick stated that the goal of the City is to get compliance, and therefore, willing to work it out an agreement. Council Member Witte asked if there were issues from when the Pancake House first opened. Mr. Kirkpatrick stated that the issue was with storm drainage and they believed that they had to solve the drainage issue prior to paving the parking lot. The storm drainage issue was not worked out until the summer of 2007.

**The Council decided to extend the work session discussion at this time and delay the public hearing until 6:30 p.m.**

**AB 08-246 Discussion of potential public uses between Legacy Park and Brown Park**

Mr. Kirkpatrick introduced a memo that gave information on possibilities for development of the land between Mile High Marina and Brown Park. There are some constraints to the land, such as the Land Water Conservation Fund constraints, the issue of the Tomlinson dock, and zoning code requirements.

Mayor Kulesza asked if the owner of the Tomlinson dock had been asked to come in and talk with City staff about the dock. There was some discussion as to the origin of the Tomlinson dock. The City will have to determine the legality of Mr. Tomlinson's dock. Mr. Kirkpatrick felt that if a big marina was approved, or some other development on the land then the developer would have to deal with Mr. Tomlinson. However, if there is not any development, then the City will need to take care of it no later than the coming summer. Council Member Witte feels that it is a City issue and the City should deal with it prior to any kind of development being approved.

Mr. Kirkpatrick stated that at the most recent Urban Renewal meeting Robin Gerblick suggested that the Urban Renewal Agency purchase the marina. Council Member Bailey stated that some of the community members had suggested some kind of a boat house.

Mayor Kulesza bought the discussion back to some of the possibilities of uses from no development, to following the Urban renewal plans for a pathway through that piece of land, to the possibility of some developed use. Mayor Kulesza likes the idea of the pathway going in and then at some future date to look at possible additional uses or development. Council Member Bailey stated that before anything can be done there, Pine Street to Hemlock Street needs to be repaved. It was originally supposed to be done with the Urban Renewal development project of Legacy Park. When it was surveyed to put in the sidewalks, it was determined that the street and the sidewalk would not match up leading to the street needing to be redone to accommodate the sidewalk. It was pulled from the contract with the understanding that Urban Renewal would

work to get the street redone. Council Member Bailey would like to see sidewalks on both sides of the street.

Council Member Bailey stated that a small boat launch could go there, at the foot of Spruce Street, for kayaks and small watercraft. The Council had weighed the idea about a year ago for it to be a possible launch site for the concessionaires and/or a canoe launch site. Council Member Witte asked if the Urban Renewal Agency would have enough revenue to fund a project like that. Council Member Bailey stated that they do have some money, but they would have to wait until spring to see exactly how much revenue they will have. They rely on tax revenue to pay off their bonds, so the January tax receipts will give them a good idea as to where they stand.

There was some clarification to the difference of leasing the land as apposed to a concessionaire's agreement. It was determined that a lease is exclusive and the concessionaire's agreement is non-exclusive.

Brian O'Morrow stated that there were some other issues to consider such as water quality issues with storm water run off and the oxygen demand that from the breakwater and pilings. He also stated that with moving the concessionaires, the neighbors may have an issue with it so he suggested that the City should speak with the neighbors prior to any decisions.

David Carey commented that for personal watercraft, the area in its current state is not a beach; it is a very steep and rocky area.

Carol Coyle stated that in the mention of multiple uses, the Water Improvement Funds grants from the State of Idaho are for motorized boating improvements and therefore significant funding is available for boating improvements.

Mr. Kirkpatrick asked the Council if they wanted anything further from staff on this topic. Council Member Bailey stated that if the marina is really for sale and there is an opportunity for the City to purchase it, it may be worth looking into. Mayor Kulesza does not see any rush at this point.

Mr. Carey stated that he had hoped for more of a "brain storming" session. He had hoped for more of a direction. He wants to make sure that the issue does not just go away. There was some clarification of what the Council was looking for through the public comments and then through some discussion. Mr. Carey was frustrated that when there were some specific ideas for development, the Council received much public involvement, but now that the agenda was for discussion of possibilities there was no public involvement at all.

Mr. Kirkpatrick stated that there is an adopted public plan for the development of the area between Mile High Marina and Brown Park. It calls for a pathway up by the road and limited open space, and informal park use of the water front. This plan went through extensive public involvement, and is in place and the Urban Renewal Agency intends to fund it. The Council wants to look at the budget numbers and plans to make it happen.

**Mayor Kulesza led the audience in the Pledge of Allegiance at 6:36 p.m.**

## **PUBLIC HEARING**

Council Member Scott left the meeting and was available through conference call at 6:45 p.m.

### **AB 08-145 ZON-07-03: Crystal Beach Condominiums – Zoning Map Amendment from CC to R8 -Continuation**

Ms. Groenevelt gave a history on this item. The applicant requested approval for a Zoning Map Amendment. Previously, a bank existed on the subject property (103 East Lake Street) and this parcel was zoned Community Commercial. The applicant has demolished the building on this parcel and is now applying to have the Community Commercial property rezoned to R8 – Medium-Density Residential. The proposed Zoning Map Amendment will remove an instance of “spot zoning” in the City of McCall.

This application appeared before City Council on three previous occasions in 2007: July 12, July 26 and August 9. The application was continued at the July meetings based on the lack of a final development agreement. The application was remanded to the Planning & Zoning Commission on August 9, 2007 because of new information relating to an ITD project at the Mission Street intersection. After being remanded, the application appeared before the Planning & Zoning Commission on August 5, 2008. At the August meeting, the Commission recommended the application for approval by the Council.

Based upon a revised Development Agreement, which has been reviewed by the City Attorney, staff recommends approval of this application. There was some discussion on the revisions made to the development agreement and ordinance.

**Mayor Kulesza opened the public hearing at 6:47 p.m.**

**Hearing no comments, Mayor Kulesza closed the public hearing at 6:47 p.m.**

**Council Member Witte moved to approve ZON-07-03, Crystal Beach Condominiums subject to the presented Development Agreement and Findings and Conclusions. Council Member Bailey seconded the motion and in a roll call vote, all members voted aye and the motion passed.**

Mr. Nichols stated that the ordinance was not noticed on the public agenda and that it should be postponed and adopted on the January 8, 2009 Council meeting.

## **PUBLIC COMMENT**

**Mayor Kulesza called for public comment at 6:51 p.m.**

**Mark Colafranceschi** – business owner – Expressed concern over how the City dealt with Bonnie Bertram and the Pancake House and the paving of the parking lot. He feels that how the

City deals with businesses in tourism, that the City needs to look at the business and what that business does for the City and what tourists do when they come to the City. The tourists look for things to do and there are few activities to do that are not outside activities. He feels if the City jeopardizes the non outdoor activities, it jeopardizes tourism. He feels that during these economic times it is disconcerting that the City would put undue pressure on a business that is doing its best instead of trying to remedy the problem. He feels that Mrs. Bertram made the right choice in not paving the parking lot so as not to over extend her and not be able to pay staff.

Mayor Kulesza responded that the City is taking steps to resolve the issue and has no intention to have anyone go to jail, have anyone out of work, or to close down a business.

**John Drips** – long time resident – asked for clarification as to what the Council intends. Mayor Kulesza repeated that the City has no intentions to send anyone to jail, put anyone out of work, or to close down any business. He stated that Mr. Kirkpatrick has worked with the City Prosecutor and the Bertrams to get a continuance to resolve the issue. Mr. Drips asked if Mr. Kirkpatrick, the City Manager, acted with the direction of the Council or did he act alone. Mayor Kulesza confirmed that the City Manager can act without the direction of the Council and the City issues citations as needed. Mr. Drips does not feel that the articles in the paper are very complimentary to either the City or to Mr. Kirkpatrick. He wanted to know if the Council intended to make any apologies to the Bertrams.

Mr. Drips stated that the letter in the paper that got his attention was the one that questioned whether or not there has been a mistake in the City Manager form of government in lieu of a Mayor. He feels that if the citizens decide to take steps to change that they can elect to do so. He feels that Bonnie Bertram is a pillar of the community and feels that she put herself in a position as a business woman to lose some clientele to serve on the Council. Mayor Kulesza stated again for Mr. Drips that the City had made three offers to the Bertrams to try to resolve this issue, once prior to the citation and twice after. The City has also worked with the prosecuting attorney to continue the court date so it can be resolved, if they agree.

Council Member Bailey made a comment on the Mayor versus City Manager form of government, his experience is that the decisions a Mayor makes is a political decision. He thinks that the City of McCall runs very efficiently and in a professional manner with a City Manager form of government. He disagreed with the letter to the editor questioning this form of government.

Mark Colafranceschi wanted to know what the City's stance is with these economic times, what happens when a business owner cannot fulfill their obligations with the City in terms of doing it within a timely manner that best serves the community and her staff. He feels that speaks loud and clear when she was cited and being pursued in the courts as opposed to the City looking at what she has done as a business person and as to what she has built. He feels that the City should assume that she wants her building to be complete with the parking being a positive reflection on what the building looks like. He wants to know what happens if it is not feasible and puts her business in jeopardy.

Mr. Nichols stated that when someone is in an economic hardship and is unable to fulfill their contract, ordinarily that someone would approach the party of whom they have the contract with and let it be known that they have a situation and then ask for an extension. It is not the City's responsibility to go to them and ask if they are going to be on time, it is on the shoulders of the business owner to ask for an extension. As he understands the facts, that did not happen with the situation with the Bertrams. The City does not question Mrs. Bertram's business or how much she contributes to the community; however the City is in a position that they have to approach each person the same.

Mr. Colafranceschi stated that he felt it could have been dealt with differently. He appreciates that the City treats everyone the same. He stated that he now has an understanding that the City is trying to work with the Bertrams to resolve the issue.

Mr. Kirkpatrick explained that the City did show flexibility with this issue; due to the status of the business owner, the City did not require a bond to ensure that the work would be done, as is most often required for this type of project. It is always the City's intention to work with applicants to bring them into compliance with the City's code in a way that meets their needs. In this case, since the building was built in 2001, the City has worked with them to bring them into compliance with storm water issues, and since the addition in 2007, the issue of paving the parking lot. The City has tried to be cooperative as possible, as they would with the vast majority of applicants.

**Hearing no further comments, Mayor Kulesza closed the public comment at 7:12 p.m.**

## **CONSENT AGENDA**

Staff recommended approval of the following items:

- Minutes from October 23, 2008
- Warrant Register printed on December 11, 2008
- Payroll Report for Period ending November 28, 2008
- AB 08-239 Alcohol Beverage Catering Permits
- AB 08-240 AIP 13/14 State Grant
- AB 08-241 City Clerk Confirmation – BessieJo Wagner
- AB 08-244 Special Olympics Festival 2009 Road Closure
- AB 08-245 Idaho Department of Parks and Recreation Road and Bridge Program grant application for intersection improvements at Lick Creek Road and No. Davis Ave.

Some discussion took place to clarify the warrant register and correct the minutes.

Council Member Scott rejoined the meeting at 7:21

Council Member Witte moved to approve the Consent Agenda with the minutes corrected. Council Member Bailey seconded the motion and in a roll call vote, all members voted aye and the motion passed.

## **BUSINESS AGENDA**

Council Member Scott recused herself.

### **AB 08-238 SUB-05-01 – Whitetail – Phase 1A – Amended: Plat Recordation Timeline Extension Request**

Mike Hormaechea, developer, asked for a 12 month extension on the Whitetail – Phase 1A plat recordation for some revisions and would like to bring it back to the City after the revisions.

**Council Member Bailey moved to approve the plat recordation timeline extension request, making the new deadline January 25, 2010. Council Member Witte seconded the motion and in a roll call vote, all members voted aye and the motion passed.**

Council member Scott rejoined the meeting.

### **AB 08-242 Idaho Power Company Increase in Franchise Fees Ordinance**

To date the City had not received any public comment.

**Council Member Scott moved to Read Ordinance 862 by title only, second reading only. Council Member Bailey seconded the motion and in a roll call vote, all members voted aye and the motion passed.**

Ordinance 862 was read, second reading only by Mrs. Wagner.

### **AB 08-243 Environmental Advisory Committee Appointment**

The Council had some discussion on the letters of interest and stated that they would appoint all interested making the Environmental Advisory Committee a membership of five members to a term determined with one High School Representative.

**Council Member Bailey moved to appoint the following to the Environmental Advisory Committee: Kathleen O’Neill and John Rygh to a term expiring on January 5, 2011; Lindsey Truxel and Jenni Blake to a term expiring on January 5, 2012; Claire Remsberg and Cindy Miller to a term expiring on January 5, 2013; and Nathan Wagner as the High School Representative. Council Member Scott seconded the motion and in a voice vote, three members voted aye and the motion passed. Council Member Witte abstained.**

## **EXECUTIVE SESSION**

At 7:43 p.m. Council Member Scott 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.

## ADJOURNMENT

Council returned to regular session and without further business, the meeting was adjourned at 9:20 p.m.

  
Bert Kulesza, Mayor

ATTEST:

  
BessieJo Wagner, City Clerk