

# MINUTES

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**McCall City Council  
Regular Meeting  
McCall City Hall (Lower Level)  
December 4, 2008**

## Agenda

Call to Order and Roll Call  
Department Reports  
Public Hearing  
Public Comment  
Consent Agenda  
Business Agenda  
Committee Minutes  
Adjournment

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

**Mayor Kulesza called the regular meeting of the McCall City Council to order at 5:33 p.m. Council Member Bailey, Council Member Delaney, Mayor Kulesza, and Council Member Scott answered roll call. Council Member Witte was absent. A quorum was present. Council Member Witte arrived at 5:41.**

In addition to the Council Members, present were Lindley Kirkpatrick, City Manager; City Attorney Bill Nichols; Jerry Summers, Chief of Police; Eric McCormick, Golf Course Superintendent; John Anderson, Airport Manager; Linda Stokes, Acting Treasurer; Michelle Groenevelt, Community Development Director; Brock Heasley, Parks and Recreation Director; Brenna Chaloupka, Acting City Clerk / Administrative Assistant; and BessieJo Wagner, Deputy City Clerk / Administrative Assistant.

## **COUNCIL WORKSESSION**

### **City Manager Report**

Mr. Kirkpatrick went over the upcoming meeting schedule. There will be two meetings in December. Some additional meetings not on the schedule are:

- The mediation with McCall Aviation on December 8, 2008 - Mayor Kulesza, Mr. Kirkpatrick and Ms. Groenevelt will be participating as the City representatives
- The Upper Payette River Economic Development meeting is on December 10, 2008 – Mayor Kulesza and Mr. Kirkpatrick will be attending (Council Member Scott asked that they request some kind of a report reflecting what has been happening with UPRED)
- The Valley Adams Partnership meeting is on the December 11, 2008 (tentative)
- The Chamber of Commerce general meeting is on December 11, 2008, 7:30 a.m. at the Shore Lodge, featuring a presentation from John Church, an economist who did Tamarack's economic impact report

The Big Payette Watershed Advisory Group (WAG) met the afternoon of December 4, 2008. It was the annual reports meeting. A report from the USGS on the water quality monitoring program stated that this year all four water quality objectives were met.

The State of Idaho's budget cuts and holdbacks will affect the City directly. The City has received some revised state revenue estimates that the City may receive \$25,000 less than what was budgeted for the general fund. Mr. Kirkpatrick stated that the revenue for property taxes is difficult to predict. That difficulty is due in part to the number of homes foreclosed upon that did not pay their taxes and how many people just did not pay.

The LOT final report was not ready for Council; Mr. Kirkpatrick will get it to the Council as soon as it is available. The Golf Course benefited from the early snow that melted, as it enabled the Golf Course to get some projects done that could not be done during the season. The Planning & Zoning Commission met earlier in the week and has recommended some code amendments that will come to Council sometime in January.

Mr. Kirkpatrick stated that Community Development and the Police Departments are distributing monthly newsletters. Council Member Scott and Council Member Bailey stated that they did not see the police department newsletter; Mr. Kirkpatrick indicated that he would follow-up to ensure they receive it.

#### **Consolidated Department Head Report**

Council Member Scott questioned the leakage test of the big pond liner that had failed, and asked what the level of concern with this failing is. Mr. Kirkpatrick stated that the results from the first test, above the underdrain system outlet, at the outlet, and below the outlet, the numbers were essentially the same which is positive. The leak test will always fail due to the testing requirement of the pond being full and no ice present in the pan. The only time it is full is in the spring and temperatures are still freezing at night. As part of the testing methodology, the City is working with DEQ to have a test that would accurately test the system.

Council Member Bailey asked if at the next meeting they would appoint the Environmental committee. There were currently seven applicants and the Council commented on the excellent candidate pool.

Council Member Bailey clarified the reason for the Pancake House receiving their code non-compliance letter was due to a code violation of their development agreement. They need to bring their parking lot into compliance by McCall City code and the conditions of approval. The development agreement that they signed said they would pave it. There was some discussion on some different paving alternatives, one of which is made with recycled tires that is porous and allows the water to drain through as opposed to run off. It was stated that there is one development using this type of asphalt.

Council Member Bailey asked about the status of the Public Works Director. Mr. Kirkpatrick stated that they are still looking for the right applicant.

Council Member Scott asked if the non-relevant items on the department reports could be removed so that the Council would not have to sift through to find current information.

Council Member Bailey wanted clarification of several projects on the aging report marked "Lardo Development". Ms. Groenevelt clarified that they were the long narrow lots that a developer was working with several different investors but the developer is no longer associated with the project, so the property owners are responsible for the bill.

Council Member Witte had a question about the airport and when to expect the comments by the FAA and would like those comments forwarded to the Council. Mr. Anderson stated that he should receive those comments by early next week.

Council Member Witte questioned the VARHA report and the referenced research of community housing ordinances, and asked will there be a report from that research. Ms. Groenevelt stated that it should be coming. It was suggested that a deadline should be given. It was also clarified by Ms. Groenevelt there is not a committee for community housing.

Council Member Bailey asked about the Greystone Village No. 3 infrastructure project and if the developer was bonded to complete it. Ms. Groenevelt stated that they had a letter of credit which has expired, and now there is no security for those improvements. Mr. Nichols stated that all letters of credit have an expiration date and should be calendared at least 60 days prior to expiration to verify that the project is either done or have the letter of credit renewed. Mr. Kirkpatrick stated that they would look at what the options are and report back. Council Member Delaney also wanted staff to look at the process breakdown that allowed the letter of credit to expire.

Council Member Scott questioned why only half the lights at Legacy Park are lit. It was clarified that they additional lighting is for when there are events that warrant extra lighting.

**Mayor Kulesza led the audience in the Pledge of Allegiance at 6:00 p.m.**

## **PUBLIC HEARING**

### **AB 08-222 Development Impact Fees and Capital Improvement Plans**

Mr. Kirkpatrick clarified that this had been noticed as a public hearing, and the City is still working with the consultant to answer some questions and have an amended report released and available for review. Staff recommendation is that the Council accepts comments and then to continue the public hearing until January 8, 2008 at 6:00 p.m. Council Member Bailey feels that making the Impact Fees and Capital Improvement Plan as part of Chapter 3 zoning is a mistake. He did some research of other cities that have adopted Impact Fees and they have put it as part of their building code or as a separate title in their code. He also had some suggestions of adding some paragraphs, and to possibly phase in the impact fees over time. Mr. Kirkpatrick stated that some of the items that Council Member Bailey has brought forward are part of what is being worked on with the consultant and legal counsel, as well as other concerns that were brought forward by the public.

Mayor Kulesza reiterated that any comments that are made at this time would only pertain to the current document and that particular document may be revised between December 4, 2008 and January 8, 2009.

**Mayor Kulesza opened the public hearing at 6:07 p.m.**

**Victor Villegas** - 1405 West Main Street – Board of Realtors representation – He asked the City Council to look at whether the document complies with the Idaho Statutes. He handed out a copy of the Idaho Statutes for the Council. He stated that the calculations in the current Capital Improvement Plan and Impact Fee Study are incorrect, and if the City is going to collect a fee then they can only collect a fee based on growth. Mr. Villegas asked that the Council would read the Statutes and compare them to the Capital Improvement Plan.

**Brian O'Morrow** - 1195 South Samson Trail – a member of the Impact Fee Advisory Committee – He stated one of the concerns that the Advisory Committee had was that Valley County would also be enacting impact fees. They were concerned about the difference between the two and whether building within the City would be discouraged. The Advisory Committee last met in the spring of last year and the plan has had at least one revision since that time, and he would like to offer the Advisory Committee's services to at least look through the document and give their input or advice.

**Mike Hormaechea** – PO Box 6887, Boise – He stated that impact fees would affect their existing project, Alpine Village, in the amount of \$1 million in additional fees. The current rate of cost for rent in a commercial building range from \$8 - \$15 a square foot a year. With a \$21 impact fee on top of that, the first 1.5-2.5 years of business of rent would be just paying off the impact fees only – no return on investment, and no coverage on any other development or infrastructure cost. He stated that no retail development could withstand those kinds of fees. He does not know how new retail could come to McCall; it would make it difficult to bring new retail to McCall. In his opinion, with a depressed housing market, to add on this type of expense would be a deal breaker. He asked that the Council not adopt an impact fee ordinance, in this economic climate it is not the right time for it to happen.

**Steve Millemann** – Hormaechea family representation –Mr. Millemann stated that he and his associates have conducted a first level analysis of the Capital Improvement Plan and of the ordinance and feels it is “fatally flawed” and would not hold up in court. He does not think these defects are technical or minor or can be fixed with a paragraph, so he gave his comments. He does not feel that the work has been done, and as a result the fees would have devastating effects on the already devastated economy. He feels that it would be challenged and that it would not stand up in court. He stated his intent is to work with the Council and that the impact fees would be a mistake.

He stated that even despite the legal issues, the fundamental scheme behind the statute is a very detailed process starting with a detailed specific inventory of the land uses and the existing facilities. What would the impact of the projected specific land uses would be on the capital infrastructure. He stated that they need to look at what the City's performance standards are and what are the appropriate current standards so that with accuracy deficiencies can be determined. Impact fees cannot be used to correct any current deficiencies; they can only be used on specific impact from growth. He does not think that under this plan, the two can be distinguished.

Mr. Millemann continued to say that the facilities that would be needed for that growth would need to be established to determine the nexus between particular land uses and facilities. He stated that the methodology requires that specific deficiencies are addressed with a specific plan to fund them, including from what sources, on what time frame and on what schedule. It then

requires that the future growth driven demand be quantified with specific projects. He stated that the current plan does not reflect those specifics and without specifics how can it be shown what the funds were spent on specifically. He stated that at the end of the process; develop a funding plan which looks at all other sources of funding.

Mr. Millemann suggested to the Council that they seek independent legal opinion of the Capital Improvement Plan and ordinance from a firm that has no vested interest in the outcome to the City or developers within the City. He asked that the Council get its own independent analysis, and take out a one page ad in the Star News to tell the public what the impact fee number would be for the general public. He stated that the general public has no idea of what is being contemplated. He stated that a few examples of deficiencies in the Capital Improvement Plan are not identified. When there are none listed it assumes that there are no deficiencies. Fees cannot be used to correct current deficiencies. He stated that there was no evidence of external data being collected. He stated there is a complete absence of reference to any specific project in the CIP. There are summary numbers for summary categories. It does not say how or when the money would be spent. He feels it is unfair and in direct contradiction of the state statute. He stated that until the analysis is done a fair product cannot be reached.

He stated that the budget categories of the CIP, the studies necessary to answer the questions he asked the Council, are scheduled to be done after the ordinance is passed. He also stated that according to the city's budget, the impact fees will be used for analyzing what storm water facilities might be needed. He stated that the process the City is using is backward when they have already included impact fees in their budget process before the impact fees have been implemented. Under the statute, the City is supposed to know the information prior to setting the impact fee. He also stated that there is an absence of any other available funding sources. He stated that there is no analysis of the incremental tax benefits to the City. The statute requires that as part of the development of impact fees, the analysis of alternative funding sources occur. He stated that the ground work the law requires has not been done.

Mr. Millemann stated that as a policy issue, the people that are fighting to hold their businesses, their jobs and their homes, with the approval of impact fees the people of McCall would be severely impacted.

**Hearing no further comments, Mayor Kulesza asked for a motion to continue the public hearing at 6:41 p.m.**

**Council Member Witte moved to continue the public hearing until January 8, 2009 at 6:00 p. m. Council Member Delaney seconded the motion. In a voice vote, all members voted aye and the motion passed.**

## **PUBLIC COMMENT**

**Mayor Kulesza called for public comment at 6:42 p.m.**

**Hearing no comments, Mayor Kulesza closed the public comment at 6:42 p.m.**

## CONSENT AGENDA

Staff recommended approval of the following items:

- Warrant Register printed on November 26, 2008
- Payroll Report for Period ending November 14, 2008
- AB 08-234 Alcohol Beverage Catering Permits
- AB 08-230 Application to Hang a Highway Banner – 2009 Special Olympics World Winter Games
- AB 08-235 Purchase Agreement for Former Fire Station
- AB 08-232 2009 Winter Carnival Venues
- AB 08-236 Grant Application, Snow Removal Equipment

Some discussion took place to clarify the warrant register and the agenda items.

**Council Member Delaney moved to approve the Consent Agenda with the correction to the grant application to remove the statement “Not applicable. The County owns and operates the FBO” on the Required Statements page. Council Member Bailey seconded the motion. In a roll call vote, all members voted aye and the motion passed.**

## BUSINESS AGENDA

### **AB 08-233 Idaho Power Company - Adopt Ordinance to Increase Franchise Fees**

Brenna Chaloupka, Acting City Clerk, gave a brief history of this agenda item stating that a letter of interest to increase fees was submitted to Idaho Power by City Staff in September, 2008 and staff met with Idaho Power to begin the process of increasing the franchise fee to 3%. The franchise ordinance was formally introduced to Council during the October 23, 2008 meeting and was published in the Star News on October 30, 2008. To date, December 4, 2008, no public comment has been received, so staff recommended only the first reading of the ordinance, rather than adoption at this time in anticipation of receiving public comment.

Mayor Kulesza would like it noticed in the paper other than just the ordinance posting. Council Member Scott asked for clarification of the difference of reading it once now as opposed to reading once at the time of adoption. It was clarified that by doing the first reading it shows Idaho Power that the City is moving toward adoption. The first reading does not mean that the Council is bound to adopting the ordinance; it is just a step toward adoption. If the City is going to notice it in the paper, then the City needs to ensure that the numbers used are accurate and ensure that the public understands where the franchise money will be used.

**Council Member Delaney moved to read Ordinance 862 by title only, first 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 by title only, first reading by Mrs. Wagner.

Mayor Kulesza called for a recess at 6:59 p.m. The meeting reconvened at 7:07 p.m.

### **AB 08-237 Marina Development between Legacy Park and Brown Park**

Mayor Kulesza stated that there have been many comments on the issue of marina development. He stated that the Council would accept new comments from the public. After comments from the public, the proponents for development would have an opportunity to speak on the comments.

Mr. Kirkpatrick clarified that as the landowner, the Council must determine if any of the previous agreements, the MOU with McCall Gas Station, Inc., or the extension of lease with Mile High Marina, requires the City to accept land use applications. Staff has looked at the legal issues regarding both agreements and what they mean. As a result of the work done by the legal team and staff members, the recommendation from staff as it relates to Mile High Marina was that Council negotiates for an expansion. It would be consistent with the terms of the 2007 lease extension that stated that any request for future additions or expansions would not be unreasonably denied. He stated that as a condition of the recommendation the negotiations would center on what was originally proposed, a 100 slip expansion.

For the McCall Gas Station, Inc./Carey proposal, staff recommends that the Council look at the 1995 MOU, along with the legal implications, as an agreement to negotiate. Staff recommends that the Council enter into negotiations with McCall Gas Station, Inc. The original proposal was that the marina would be limited to no more than 100 slips. Due to the language in the 1995 MOU and with the concerns raised by the public, the recommendation is that the negotiations be limited to a marina no larger than 100 slips. Mr. Kirkpatrick expressed the importance of the Council to repeat at every stage of negotiation process, that any proposal that would be successfully negotiated would have to go through the Conditional Use Permit process.

Mayor Kulesza reiterated that at this point, any negotiations the Council would participate in would be as a land owner and then if an agreement was made, the Council would assume a regulatory role. Mr. Kirkpatrick stated that it is important that all parties understand that if a lease is negotiated there is still a condition use permit process that must be followed.

Mr. Kirkpatrick stated that if the Council did decide to enter into negotiations with either or both parties, the terms of the agreements would have to be defined. There may be some conditions including, but not limited to:

- Substantial public access including day use slips
- Significant public amenities, such as but not limited to, public restrooms, pedestrian access to the docks and accommodations for non-motorized users
- Substantially increased lease rate as compared to the 2007 Mile High Marina lease rates
- adequate parking
- no sale of slips
- resolution of Tomlinson dock issue of using City property without authorization
- compliance with very explicit restrictions from Land and Water Conservation requirements
- any other items that may be pertinent

### **Public Comment**

**Bill Weida** – representing the Watershed Advisory Group (WAG), stated that at a recent meeting they discussed that the current lease does not mention the sale of slips. He also indicated that the lease states that the only thing that could be done at the marina without approval would be something with the same dimensions of the current breakwater. This would mean that there would be no ability to convert the breakwater into a boardwalk. If it were to be replaced it would have to be with the current dimensions and the WAG would hold them to that.

In relation to the water quality issue, Mr. Weida stated that the results from the water quality sampling of the lake looks great for the last year and attributes those results to the major flush in the spring, a cold summer, and reduced building activity around the lake. He stated that in eight of the last twelve years the area closest to the City has gone out of limits on dissolved oxygen, most recently in 2007. He stated that the City does need something for tourist and to help the economy, so the WAG is recommending the following:

1. The City set a firm limit on the total number of slips it would allow in the areas it controls and the imperiled regions of the lake. That number is not to be exceeded in perpetuity.
2. If the City decides additional slips are available, they should be auctioned off or put into a lottery system.
3. The City should move to capture revenue from existing City owned site by taking over the operations of the marinas, and turning it into a publicly owned marina.
4. The City should then move to build a dry land Marina to remove some docks at the existing marina.

Council Member Bailey asked what a dry land marina is. Mr. Weida explained that it is an operation where the boats are housed in a covered structure on land, typically next to the water. The boats would be stored in this facility and then when an owner would want to use their boat, they would call ahead of time and the facility would bring their boat to the lake for them. After the boat owner is finished they would park their boat at the dock and the facility would remove the boat and put it back into storage. Mr. Weida pointed out that the additional advantage of a dry land marina is that it provides storage for the winter.

Council Member Scott asked if the WAG has a perspective on the milfoil contamination from boats coming in and out of the lake as opposed to the boats staying in the water. Mr. Weida stated that the perspective is that the more boats that come in and out of different places the larger the milfoil contamination will be. Mr. Weida also pointed out that the number of people that use their boats in multiple lakes will still do so even if the number of slips increases.

Council Member Bailey brought up the question of whether the City could set a code that would limit the number of slips that could be built within the City limits. Mr. Kirkpatrick stated that commercial building of docks is regulated under the zoning code and if it is regulated then it could presumably be eliminated. Private docks are not regulated by the City other than possibly a building permit. There was some discussion on the possibility of a code revision to limit the number of docks and or slips built.

Mr. Kirkpatrick answered the earlier question of what the lease payment was for Mile High Marina for 2008. He stated that the lease payment was \$11,477.60. The City has not yet received the certificate of gross revenue, however in doing the math, the \$11,477.60 translated into about \$287,000 gross revenues from the slips.

**David Carey** – Hotel McCall – He stated, in response to the public letters and comments, that they do not feel that their proposal would exclude public access; it would actually create public access. Their current proposal does not generate revenue for the City; however they would be willing to work with the City in terms of what the rental lease agreement would be. As far as the water quality, they do not want to negatively impact the water quality. Their current businesses and homes use that drinking water and therefore they would not do any thing to jeopardize the water quality. He also stated, in response to the public letters and comments, that they do not **think** they have agreement, they **do** have an agreement.

Mr. Carey went on to say that they are willing to build a dock for non-motorized vehicles. McCall Gas Station Inc. is willing to work with the City to obtain the objectives the City is looking toward. They are financially viable and would not propose a project they could not do financially. They have worked with the City for years and feel it has been in a positive way. They have worked closely with Urban Renewal and are willing to continue that relationship. They would like to create an area that improves the part of the beach that is in question. They are excited about the possibility to work on a marina that the City and citizens would like to see, a quality marina that would not exclude the public and not be exclusively private. He stated that previous projects they have done are examples of public uses and positive relationship with the City. He understands that by saying “yes” to looking at the proposal does not mean it will be approved during the Planning and Zoning process, but he would like the opportunity to try.

**Brian O’Morrow** – Mile High Marina – Mr. O’Morrow responded to public comments and letters by stating that water quality is important. He and his partners understand that the burden on them is to prove that they are not adversely affecting the water quality. They feel that they can prove that they can improve water quality as part of the goal of their project. They appreciate the comments from the WAG and the suggestion of a dry land marina. After hearing the idea after the first meeting, they had started to pull some ideas in to their project. Their plan would be to store the boats off site and then bring them in for temporary use. He addressed the issue of economics and why isn’t the City considering a marina. It was his opinion that by allowing private industry to do the marina is more economical for the City. The cost of building the slips is not as expensive as it is to run it.

Mr. O’Morrow went on to say that they are not opposed to limiting the number slips on the lake. However, he stated that through an analysis of the carrying capacity of the lake and where the additional slips should be, their analysis showed that the lake could handle an additional 800 slips and, by some industry standards, an additional 2000, depending on who has done the study and how it is being compared. Their idea was they would find the ideal location and put 400 slips there and deal with demand, ultimately giving the City and the county the opportunity to draw the line to the total number of slips on the lake.

Mr. O’Morrow appreciates the difficult decision the Council has to make and looks forward to working with the City on whatever direction it may go. He stated that some of the comments from the public may reflect some misunderstanding from the public and he would like to clarify. The issue of the public access question, due to safety concerns, it is not been a good public access place. Their proposal includes some use of private property that adjoins Brown Park and that by allowing this proposal they could actually be preserving open space. They understand that the Council may or may not feel obligated to entertain negotiations for as many as 100 extra slips at Mile High Marina. The reason they did not propose 100 slips is that they feel the 400 slip

plan is better than a 100 slip plan. He stated that they think it makes more sense for the area and is better for water quality, they think it is better for public access; it would meet public demand, and provide and maintain the open space. He understands that the Council may not feel legally obligated and may not consider a proposal of more than a 100 slips, but they think that in good faith the Council should look at all the options.

Mr. O'Morrow continued that it is the perception that if the community is going to be environmentally conscious that it obviously means no motor boats; however they feel that there are a lot of environmental positives to have the additional slips at the marina such as less vehicles in the downtown area, less motors idling while they are launching their boats, less need to pave and have asphalt trailer parking, and with the access to public transit and bike paths it makes it easier for people to use their boats without having to actually drive there. Therefore it makes more sense to allow this project to go forward. The other question as to whether they can improve water quality, they think they can remove organics, they think the surfaces for parafiten are negligible in comparison to other conditions that are currently in the lake. They could prove that they could improve the oxygen levels in the lake.

Mr. O'Morrow also addressed the comments on the comprehensive plan stating that they can answer all the questions of how their proposal meets the conditions of the comprehensive plan and the Smart Growth principles. He also stated that it was the first chance they had to look at the staff report and they can live with most of the stipulations set by the City of McCall. He stated that it was their understanding that when the lease was originally renegotiated with Mile High, part of their reason for substantially with raising the lease rates in 2007 was that the expansion of the marina would be included. They look forward to the opportunity to work with the City.

Council Member Scott asked about the question of the alleged multiple empty slips at Mile High Marina last summer. A representative from Mile High Marina responded that they may have the perception that there are empty slips because some people may only use them minimally while paying for it for the season. It was also clarified that there are currently 168 slips.

Council Member Bailey asked about the renegotiation of the lease extension in December, and if they had in mind at that time an increase in the number slips. Mr. O'Morrow stated that with the lease extensions, they had anticipated that the Marina would expand. There was no exact number at that time as to how much it would expand. Mr. O'Morrow indicated that Mr. Gerblich would not have signed the lease if he had not expected some marina expansion.

Mayor Kulesza stated that neither in the lease that was brought to Council nor in any of the Council minutes was expansion ever discussed. The possibility of expansion only shows up on the final signing of the lease expansion, and that only indicated that any future expansion would require Council approval. Council Member Bailey asked Council Member Scott if she had recalled any discussion on the expansion of the marina during those negotiations. Council Member Scott stated that she was aware of some intent at some point to expand and her recollection was that it was in the range of 60-70 additional slips.

Council Member Bailey stated that Mile High Marina had applied for an application to expand the marina by 70 slips. There was a drawing that was attached to the application that was prepared in January 2006. The drawing and the application did not agree with the number of slips proposed. When Mile High Marina's lease was extended, this was the possible extension

that Council Member Bailey had thought of when they wanted to propose an expansion. In April 2006 the application went to the Planning and Zoning meeting which included the same drawing with a letter that indicated 70 slips. His understanding of the Marina expansion was that of 70 as shown in their original drawing.

### **Council Discussion on the Marina Issue**

Mayor Kulesza addressed the first question of whether either agreement, with Mile High or McCall Gas Station, Inc., requires the City to accept the land use applications for marina development. He stated that the Council has read both the lease with Mile High Marina and the Memorandum of Understanding with McCall Gas Station, Inc. and his understanding is that neither requires the City to accept the applications. He stated that both proponents would have to ask permission from the City, as land owner, prior to submitting an application for review.

Council Member Scott stated that she had to differentiate between what the Council was legally obligated to and what the Council was morally obligated to as a result of past actions. She stated that the City had intended to discuss a marina with McCall Gas Station and discuss an expansion with Mile High Marina.

Council Member Bailey stated that the wording is that “other than replacing the existing breakwater with a breakwater of similar size and dimension, any future additions or expansions of the marina or related structures and improvements, must be approved in advance by the McCall City Council, which approval will not be unreasonably withheld.” He stated that if they were going to submit something that added one boat slip, he does not think the Council could reasonably withhold approval or even 12 additional slips; however what they have applied for is an unreasonable request, which the Council can reasonably withhold permission for. The question is, in his opinion, what is a reasonable expansion request. He stated that there needs to be some process to be able to proceed.

Mr. Kirkpatrick stated that the key to the process is to be consistent with what was proposed in 2007. The original proposal appeared to be 70 slips plus 30 day use slips. If, in fact, it was misinterpreted and the 70 slips included the 30 day use slips, then 70 is the number to consider. He stated that the key is what was proposed in 2007.

Mayor Kulesza stated that there are two different proposals, one for 400 slips and one for 200 slips. He does not think it is the Council’s job to come up with alternatives to their proposals. He wants to look at the current proposals and decide whether to give permission for land use applications based on those proposals. The key question is, as land owner, does the Council accept the proposals as presented. He questions whether the expansion of the marina or a construction of a new marina is the best use of the land and in the best long term interest of the citizens of McCall. He feels that it is the Council’s job to protect the community’s long term interest.

Council Member Delaney stated that she thinks the Council should look at the proposals as they are. She stated that she does not think that a 400 slip expansion is reasonable.

Council Member Witte stated that the agreements that were signed by the City committed the City to consider an additional marina and she feels that the Council has considered it, they received public comment, they have heard much public comment over the concern of possible marina expansion, they have received information on water quality, and feels that they have

honored those agreements. She does not feel that either proponent's proposals are reasonable based on the comments they have heard.

Council Member Scott stated that both parties have expressed the willingness to work with the City of McCall.

Mr. Carey asked what the process was for this meeting and if he could interject at that time. Mr. Nichols stated that at this time the Council Members would express their opinions, then if they had specific issues they wanted Mile High or McCall Gas Station to address, the Council could list them out, then they could address them for the Council. Then it is up to the Council if they want them to come and give more input.

Council Member Delaney stated that both parties have expressed willingness to work with the Council; however, that is not what is being proposed.

Mayor Kulesza questioned if the City is required to accept the proposals or do they need to ask permission. His opinion is that they need to ask permission. If the Council says "yes" then proceed, if the Council says "no" then come back with a different proposal to ask permission. He feels that it is the Council's responsibility to respond in the best interest of the community. Mayor Kulesza does not think that an expansion or new construction is in the best interest of the community. The piece of land in question is a valuable piece of public property and is sure to increase in value. He feels that it is irresponsible and unfair to ask the public to give up one of the last remnant of public land for a private venture. He feels that the City is obligated to manage it in the public's interest.

Council Member Scott stated that one of the questions she has is what else could be done with the land, and if the alternative is a steep slope that is not useable, then a marina could be an improvement. She thinks that there is some rationale for the amenities of a small number of slips. She thinks that if the Council does approve something it should be on a smaller scale. She is willing to work and negotiate for amenities and public access for a small number of slips. She also feels that there could be some job stimulus with this type of a project and that has an appeal. She is also considering the fact of the huge amount of public comments against any expansion or construction of a marina and finally she would like to have more information prior to a final decision. She is willing to work with both parties to get an understanding of what they would like to do and try to negotiate something that would be a moderate number of slips in exchange for getting the area cleaned up and maintain public access.

Mayor Kulesza stated that he is willing to work with both parties as well, but not in the context of the current proposals. It is his opinion to reject both proposals; however he would not object to other proposals being brought forward for consideration.

Council Member Bailey asked about the proposal that came before the Planning and Zoning Commission, what would have happened if it would have went through the normal process. Mr. Kirkpatrick stated that the process would have brought the Council to the same discussion about the expansion of the lease area. Council Member Bailey stated what would have happened if they had just submitted the application and had not come to the Council for permission first. Ms. Groenevelt stated that they submitted an application that was accepted by the City. She stated that the application was very incomplete; it was scheduled for a public hearing that was never

held. The Planning and Zoning never looked at it, it was submitted and then the applicant was informed as to what was needed for them to even look at it, so the process never really started, it was submitted, then it sat, and ultimately it was withdrawn.

Council Member Bailey asked Mayor Kulesza that since he was opposed to the current proposals should he give some indication to the two parties as to what the City might accept. Mayor Kulesza responded that the two parties were currently present at the Council meeting and had heard the discussion and Mr. Kirkpatrick's report on staff recommendations, so they should have some idea as to what the City might want.

**Mayor Kulesza moved to deny permission to accept either application as proposed for marina expansion or construction. Council Member Delaney seconded the motion.**

Council Member Bailey stated that in a negotiation process, an alternative proposal should be presented and the proponents should have some idea of what they could propose that might get permission. Council Member Delaney stated that the proponents do not need to have a counter offer, but they can come with a new proposal. Mayor Kulesza stated that he would like to retain options at this time. He is not in favor of any kind of expansion or construction of a marina for this piece of public land.

Council Member Witte asked if Mayor Kulesza felt like the Council met the requirements of the previous agreements by having considered both proposals with public comment, input from the Watershed Advisory Group, and deliberated the information. Mayor Kulesza responded that he believes the Council has met the requirement as the entire Council has spent a significant amount of time considering the proposals and soliciting public comment and considering those comments.

Council Member Scott stated that it all depends on what else can be done with the land. Council Member Bailey stated that there was another proposal the previous year that the concessionaire's agreement, with the personal water craft vendors, to use the beach on the south side of the Marina to bring it to the north side of the marina in that area, so there may be an alternative idea. He also stated that another idea for a proposal included a small boat launch facility.

Council Member Witte clarified that the motion does not preclude further discussion with the applicants.

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

Mr. Kirkpatrick clarified that the Council would consider some different proposal from one or both of the current proponents, or negotiation with staff. Mayor Kulesza clarified that this action was to pass judgment on the two applications as submitted. Council Member Delaney stated that one of the main points this process has brought up is that this is public land and that the City needs to consider what the public wants long term for this land. She stated that it should be an item for the Council to have further discussion on. Council Member Witte would like to have the Parks and Recreation Advisory Committee weigh in on alternate uses as well as the WAG.

Council Member Delaney stated that the City could look into the public comment of the City running a City owned marina, and get information as to what that would entail. It may show that a private partnership is the only way to go but without the information they cannot be certain.

## COMMITTEE MINUTES

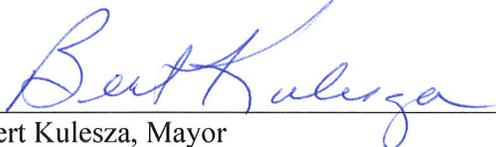
The Council received copies of the following minutes:

- McCall Public Library board of Trustees – October 22, 2008

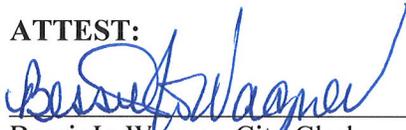
## ADJOURNMENT

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

**Without further business, the meeting was adjourned at 8:55 p.m.**

  
Bert Kulesza, Mayor

ATTEST:

  
BessieJo Wagner, City Clerk