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Idaho Code §67-2345(1b) to consider a personnel matter

Adjournment

CALL TO ORDER AND ROLL CALL

Mayor Colton called the regular meeting of the McCall City Council to order at 7:00 p.m. Mayor Colton, Council Member Arp, and Council Member Eimers answered roll call and Council Member Muller is excused. A quorum was present. City staff members present were City Attorney Susan Buxton, City Manager Robert Strope, Community Development Director Lindley Kirkpatrick, Public Works Director Bill Keating, Chief Ralph Appa and Finance Director & City Clerk Barbara Bauer.

PUBLIC HEARING

Mayor Colton opened the Public Hearing on July 10, 2003 at 7:05 p.m.

AB 03-95 VAC-03-3 Ordinance No. 780 Vacation of a portion of Dawson Avenue
Lindley Kirkpatrick reviewed information provided to the Council Members on Ordinance 780 requesting vacation of a portion of the right of way of Dawson Avenue, including the draft Findings & Conclusions and the conditions for approval. The Planning & Zoning Commission conducted a public hearing on June 3 and recommended on a 3 to 1 vote that the City Council vacate the requested portion of Dawson Avenue, subject to certain conditions. One of the P & Z's recommended conditions of approval has already been met. At this time, the unanimous staff recommendation is to deny this street vacation because it will eliminate the turn around and adequate snow storage at the end of the street.

Council Members asked for clarification of the alternatives that might be available for snow storage.

Mayor Colton called for public testimony.

Tom Schoonover is the person asking for the street vacation. He testified that he would be willing to consider providing a 15 foot strip of property along Davis Street in exchange for this change. This change is being requested because the property has been enclosed and visually included in the property sight line for an extended period. The difference in property lines was identified before Mr. Schoonover purchased the property. The information being presented tonight is the same as that provided to the P & Z Commission except that three properties on the west side of Dawson Avenue were combined as requested by the P & Z Commission.

Julie Fields testified in favor of the street vacation and was the realtor who sold Mr. Schoonover his new home. At the time of the sale, all conditions had been met with the exception of locating the pins because the preliminary title policy and maps provided at the closing indicated that no problems existed. After closing, but prior to recording the documents, problems with the location of the house and shed were discovered.

Because of the existing structures, there has not been snow storage in the area in question in the past. By providing the 15 feet of property on Davis Street, the City will have additional property on a busy street to accommodate future development of paths or street expansion and provide the property owner with incentive to improve their property. Ms. Fields supplied the Council with other addresses where the same conditions that are being requested exist.

Susan Buxton asked if there had been an analysis of the value of the piece of property being requested and of the property being offered in trade. Ms. Fields feels that it will be very difficult to have the properties valued, but that she believes that the properties are of comparable value.

John Russell, Russell Surveying, expressed concern about a due process issue—at the P & Z Commission only the Public Works Director was opposed, not the Community Development Director. He believes that since the conditions of approval by the P & Z Commission have been met, the staff position has changed and no plans exist for changing the property, that the street vacation be granted. Council Member Eimers confirmed that there is likely a direct liability issue for the title company involved in the sales transaction.

Matthew Daren, 1504 Dawson Avenue testified as the owner of properties directly across the street from the property in question. The snow storage is definitely not occurring on this property and the fence lines on the street are even all along the street. He believes that it makes sense to maintain the cohesiveness of the street by making the usage lines the property lines.

Bruce Miller 215 CeCe Way in McCall representing First American Title provided a brief overview of the types of title policies that would have been issued on this property in the past. The original surveys in this area have changed dramatically since 1914 when the original plats were signed. At this time, the maps for most areas of Valley County do not accurately reflect the property and building locations. From the title company standpoint, there is no claim against them but this change makes sense because it allows the surveys and maps to be cleaned up.

Bill Keating, Public Works Director explained his concerns about the request because there is not adequate street space and the area of private property that has been used for snow storage was fenced off in April of this year. There is technically 60 feet of travel way on this street, but the actual usable space is thinner. Council Member Arp requested clarification of the previous street vacation in this area. Although the snow removal issues have not been a concern up to now but the snow storage on private land does not protect the needs of the City.

Susan Buxton, City Attorney noted that new information provided during a public hearing does not create a due process concern under Idaho law. She also noted that Idaho law does not allow any encroachment on public land to create a taking or adverse possession of the property. It may be possible to address the concerns of the property

owner by declaring the property to be excess land rather than vacating the property if the Council chooses.

Matthew Daren, 1504 Dawson Avenue testified that he had purposely placed the new fence on his property 20 feet in from his property line in order to accommodate the snow dumping done by Public Works in the past. The Public Works Director clarified that the City has verbal permission to use the property, but that this does not bind any current or future owner.

Harry Stathis, 590 Ellis Road clarified that there are alternative methods to plow the road in this area and move the snow to another area.

Julie Fields, noted that the area in question has not been used as a street, so concerns about the loss of a street should not be applied.

John Russell, Russell Surveying again raised a concern that he had not been given an opportunity to review the staff report before this hearing and stated that he may ask for a continuance. He suggested that the hearing be continued.

Tom Schoonover, 1506 Davis noted that the plowing on Davis already creates a situation where snow storage occurs on private land as it scrapes to the sides during the plowing process. Council Member Eimers asked about the practical effect of not granting this vacation since the house encroaches on city property or the right of way. The City Attorney noted that the encroachment concerns must be addressed if the vacation of the property is not approved.

Hearing no other requests to testify, Mayor Colton asked the Council Members if there is a desire to continue the public hearing to a future date. Mayor Colton expressed concern about storing snow on private property and approving an exchange of property without knowing the value of the properties involved. There have been changes in the Idaho Code that allow the City to use public property to create or reopen streets.

Bill Keating again noted that this change will make it impossible to turn a fire truck or snowplow around if this property vacation occurs. Although it would not be an ideal situation, the existing City property should be retained as public right-of-way.

Bill Sparks of the Fire District noted that the District has not previously commented on the request. He did take a likely response vehicle to the site today and found that the only way to turn the vehicle around was to back entirely into a private lot and that this would not be possible in the winter. The Fire District will support the recommendation of the City Public Works Director.

Dottie Moore, 441 Floyd stated that a 60 foot area will not work to turn a fire truck around no matter where the property is located.

The Council agreed to continue this Hearing on Ordinance 780 to the July 24, 2003 meeting of City Council in order to provide time to gather more information and allow the property owners to specify the value of the properties in question and for staff to clarify the value of the Davis Street strip as a potential bike path. Council Member Eimers asked that staff try to find alternatives to assist the applicants in finding alternatives to protect the City. The applicant is responsible for obtaining information, including appraisals of the property and identifying alternatives for the next Council meeting, and staff members are directed to provide assistance and information to the applicant.

PUBLIC COMMENT

Mayor Colton called for public comment.

Harry Stathis, 590 Ellis Road asked that the City support personal watercraft races in August 2003 by providing the event with access to Legacy Park for a 5 hour period on a Sunday from 11 a.m. until 4 pm. The organizers will provide 'honey pots' in the park. The event would not impact the boat launch but could impact the City dock with a dumping station. If the Council supports this idea, organizers will still need to get permission from the Department of Public Lands. Concerns could include water or noise pollution and the shutdown of the public beach for the majority of the day. However, this is a recreation based City and although the event will generate some criticism, but it will also generate some travel dollars. The park would be available for race observers, but no swimming would be possible during the event. The group is seeking a fun event rather than a serious racing event.

The Council asked that the City Manager work with the group to address the issues necessary to determine whether this event is feasible.

CONSENT AGENDA

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Mayor Colton moved to approve the Consent Agenda. Council Member Eimers seconded the motion. The motion carried.

BUSINESS

REPORTS

Council Member Arp asked that the Police Department look into the use of City land at the corner of Davis and Lick Creek Road as a location for used car sales. The Police Chief has been aware of this and has worked with an individual who has been parking there. There are also concerns about parking in the bike path near the marina and Hearthstone signs. Moxie Java is also putting trash out on the sidewalk around 7:30 p.m. and staff will find out how often this occurs.

Council Member Eimers asked about the Indians selling salmon from trucks on the side of the street. They are allowed by federal law to do this without a Hawkers license.

Mayor Colton asked that the Police Department activity reports include dates noting the time period being covered to make them easier to put in context.

Council Member Arp noted that if the Council is truly interested in learning about the feelings of the community relating to the Golf Course, a public meeting may not be the best choice. A good scientific survey or an advisory vote on the November ballot would be more effective in learning the true feeling of local residents and taxpayers. It can be very intimidating to some people to speak up before a crowd. The use a two-year override levy request on the ballot in November. This would be the only way to actually determine the true interest of the public. This levy would need to be approved by a simple majority with a clearly defined goal, including paying off the bonded debt. It would take approximately \$750,000 to truly meet the needs of the Golf Course and create potential for future success by eliminating the golf course debt. In order to place the levy on the November 2003 ballot, the work needs to be done by September. Approval of an override will protect other City services while allowing support for the Golf Course. A public meeting in August will allow citizens to address options. Using a format similar to the public budget workshop would help reduce the intimidation factor. Other options for public involvement would be the use of small group problem-solving breakout sessions after a group presentation of issues. This process may actually take several meetings rather than just one.

EXECUTIVE SESSION

No executive session was held at this meeting.

ADJOURNMENT

Mayor Colton moved to adjourn. Council Member Eimers seconded the motion. All Council Members voted aye. The motion carried. The Council adjourned at 8:55 p.m.

Ralph Colton, Mayor

ATTEST:

Barbara Bauer, Finance Director/City Clerk