

MINUTES OF REGULAR MEETING
SUGAR CITY COUNCIL
THURSDAY, NOVEMBER 8, 2018

Presiding: Mayor David D. Ogden
Meeting Convened at 6:30 p.m.
Prayer: Bruce King
Pledge of Allegiance

Present: Mayor David D. Ogden; Clerk-Treasurer Wendy McLaughlin; Councilors Brent Barrus, Vaun Waddell, Joy M. Ball, and Bruce King; Idaho House of Representatives Elect for District 34B Britt Raybould; City Building Inspector Cliff Morris; City Engineer Dick Dyer of The Dyer Group; Planning and Zoning Chairman Dave Thompson; Design Review Board chairman Paul Jeppson; *Standard Journal* Reporter Lisa Smith; Citizens Bruce Arnell and Catherine Nielsen.

MINUTES: Mayor Ogden asked if there were any corrections to the minutes of the regular meeting held on Thursday, October 25, 2018. Each councilman had a copy of the minutes prior to the meeting. It was moved by Councilman Waddell and seconded by Councilwoman Ball to accept the minutes; motion carried.

RECONCILIATION REPORTS: Wendy presented the October reconciliation reports for the General Fund. It was moved by Councilman King and seconded by Councilman Waddell to accept the October reconciliation reports for the General Fund; motion carried. Wendy presented the October reconciliation reports for the Utility Fund. It was moved by Councilman Barrus and seconded by Councilwoman Ball to accept the October reconciliation reports for the Utility Fund; motion carried.

Wendy presented the current bills in the amount of \$112,741.32. It was moved by Councilman Waddell and seconded by Councilwoman Ball to pay the current bills, together with all regular November bills; motion carried.

DESIGN REVIEW REPORT: Paul Jeppson reported that the Design Review Board recommends approval of the Jon O'Rullian building and design in Lot 9, Block 3 - 229 Sugar Avenue - of the Business Park. There were three conditions that needed to be met and since have been rectified:

- Current state business license
- Handicapped parking area
- Landscaping requirements

Mr. O'Rullian agreed to follow all code requirements. An electronic vote was taken and will be ratified at the next Planning and Zoning Commission meeting. Mr. Jeppson showed site plan and elevation to the council.

MOTION: It was moved by Councilman Barrus and seconded by Councilman Waddell to accept the O'Rullian building design review recommendations; motion carried.

TORT CLAIM REFERRAL TO IDAHO COUNTIES RISK MANAGEMENT PROGRAM (ICRMP):

Councilman Waddell's attorney notified the city on November 6, 2018, of a claim for legal expenses on \$47,808 for Mr. Waddell's defense in Madison County Case No. CV-18-352 (see Attachment #1).

Councilman King is also claiming approximately \$43,000 from the city for his defense in the same case. Councilman King asked that a copy of the letter from City Attorney Dylan Anderson to ICRMP be sent to the council.

The mayor indicated that all paperwork had been sent to ICRMP for the claim and that the city had not received an official response. He said he would consult the city attorney about providing copies of communication with ICRMP to council members.

MOTION: It was moved by Councilman Waddell and seconded by Councilman King to send the claims to ICRMP; motion carried. The mayor said Councilman Waddell's claim had already been sent to ICRMP and that Councilman King's claim would be once it is received. Mr. Waddell said he understood that, and his purpose was to place his motion in the record. Councilman Barrus objected to the motion and questioned the council's actions, since it directly affects them personally.

PROPOSED COUNCIL MEETING ORDINANCE: The council tabled the proposed council meeting ordinance until next meeting to give the council time to review the proposals. Councilman Waddell proposed that Ordinance No 258 of 2006 be revised to show that meetings would not be held on the fourth Thursdays of November and December. Posting the agenda and meeting places were also included.

PLANNING AND ZONING COMMISSION REPORT: Dave Thompson reported on the following items:

Final Plat Process: Mr. Thompson is revising the final plat process to include a Planning and Zoning Commission review before being recorded, citing there were too many mistakes to previous recorded final plats.

Land Use Schedule: The commission needs more time to work on definitions and regulations for cottage and tiny homes.

City Code 9-1-3 and 9-1-4: The commission hopes to set a public hearing date at the next meeting on titles 9-1-3 and 9-1-4 of the Sugar City Code, which deal with the planning and zoning administrator and the Planning and Zoning Commission, respectively.

Impact Area Expansion: Mr. Thompson reported that he has put the project on hold until January, so that he can get needed math formulas for the expansion.

THIRD SOUTH & HIGHWAY 33 SURPLUS ELIMINATOR GRANT: The council approved the grant application seeking an award of \$416,000, and committed \$33,000 of city funds to revise and improve the intersections of Idaho Highway 33 and Railroad Avenue and of Idaho 33 and Third South and to eliminate the S curve on the state highway. City Engineer Dick Dyer presented the plans and details of the project, which would make Railroad Avenue part of Idaho 33 and the main south entrance into Sugar City instead of Front Street. It is hoped that the proposed project will improve traffic and pedestrian safety. If the city is not awarded the grant, the engineer costs will be about \$30,500 and the city can keep the prepared plans for possible future use when grant money is available. The council asked that those living within the

proposed area be notified and given opportunity for feedback on the proposed project. The application will not be submitted before December 5 to allow for public comment.

RESOLUTION NO. 2018-15 (Authorization to Apply for a Surplus Eliminator Grant to Improve the City's South Entrance) – Resolution No. 2018-15 was presented to the council and read by title only. Letters of support from the Rural Planning Organization (RPO), Eastern Communities Organization (ECHO), Norsun, Circuit Trucking, and John Pocock Trucking will be included.

MOTION: It was moved by Councilman Barrus and seconded by Councilman King to approve the grant application.

Those voting aye: Councilors Barrus, Waddell, Ball, and King
Those voting nay: None

A copy of said resolution is attached hereto marked "Attachment #2."

CHILDREN PATHWAY SAFETY GRANT PROJECT: The council approved the grant application for the Children Pathway Safety program. City Planning and Zoning Commission Chairman Dave Thompson presented details of the application to the council. The plan would connect existing sidewalks to improve safe pathways to and from school and install crossing lights in areas where needed.

RESOLUTION NO. 2018-16 (Authorization to Submit a Children Pathway Safety Grant Application to Improve Walking Routes to School) – Resolution No. 2018-16 was presented to the council and read by title only.

MOTION: It was moved by Councilman Waddell and seconded by Councilman Barrus to approve the grant application.

Those voting aye: Councilors Barrus, Waddell, Ball, and King
Those voting nay: None

A copy of said resolution is attached hereto marked "Attachment #3."

SOUTH FORK VILLA 2ND AMENDED PLAT: The council agreed to send the South Fork Villa 2nd Amended final plat back to the engineers to add open space. Dave Thompson argued that it was not enough to refer to open space in the Covenants, Conditions, and Requirements (CC&Rs), which could be changed without notification. The plat was being amended to move a property line 6 feet to the west to accommodate a building position change and was waiting for Thompson's signature. He agreed to sign the plat after the change was made.

MOTION: It was moved by Councilman King and seconded by Councilman Waddell to require the property owner to show open space on the amended plat.

Those voting aye: Councilors Barrus, Waddell, Ball, and King
Those voting nay: None

SEWER RATE INCREASE: No report.

MAYOR'S REPORTS: The mayor reported on the following items:

Email Security Update: Spencer Cook is working on the email transition and is almost finished.

City Council Logo Update: Vinyl Sign and Graphics is working on a graphic representation of the logo to present to the council.

Rocky Mountain Power Lighting Report: It could cost the city \$300-\$400 to change the lamp in each light pole in the city to a light-emitting diode (LED) bulb. The City of St. Anthony has switched all their lamps and is seeing a savings of around \$1200/month. Rocky Mountain Power owns and maintains the light poles and the city owns the lamps, which the power company also maintains for a fee. The mayor will get some more information to the council on the feasibility of switching to LEDs.

2nd Annual State of the City/County Breakfast Update: The council is invited to attend the 2nd Annual State of the City/County breakfast, which will be in late January. Details will be provided as soon as they are available.

Veteran's Day Memorial: The mayor plans to attend the Veterans Day Memorial on Friday, November 9, at 10 a.m., at which he will present a wreath to represent Sugar City.

CITY COUNCIL MESSAGES IN THE MONTHLY MAILER: Councilman Waddell said the council, including individual members, should have the opportunity to include items of concern to the public in the monthly mailer. The mayor thought it would be okay as long as the items were not political in nature. Councilman Barrus felt that items from the council should require unanimity.

DEPARTMENT REPORTS:

COUNCILMAN BARRUS: No report

COUNCILMAN WADDELL: Councilman Waddell proposed that a special meeting be called Monday to consider an independent legal counsel to represent claims for attorney fees for Councilmen Waddell and King. The council was reminded the item was not on the agenda and not appropriate to consider. Councilman Waddell said he was willing to move to amend the agenda. There was discussion about the desirability and appropriateness of such a meeting. Councilman King noted that title 1-6-2-B of the Sugar City Code states that the council president can call a special meeting of the council at any time. Councilman Waddell said that rather than continue the discussion in the meeting, he could meet separately with the mayor to discuss the issue. The mayor said he and the city attorney were available to meet with him and his attorney.

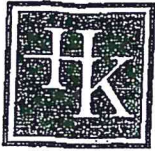
COUNCILWOMAN BALL: No report.

COUNCILMAN KING: No Report.

Meeting adjourned at 9:40 p.m.

Signed: _____
David D. Ogden, Mayor

Attested: _____
Wendy McLaughlin, Clerk-Treasurer



Holden Kidwell
Hahn & Crapo P.L.L.C.
LAW OFFICES

Attachment #1

1000 Riverwalk Drive, Suite 200
PO Box 50130
Idaho Falls, Idaho 83405

Tel: (208) 523-0620
Fax: (208) 523-9518
www.holdenlegal.com
E-mail: dstorer@holdenlegal.com

November 6, 2018

Dylan Anderson
Forsberg Law Offices
49 Professional Plaza
Rexburg, ID 83440

Re: *Vaun Waddell — Legal Defense Costs, Lerwill v. City of Sugar City, Madison County Case No. CV-18-352*

Dear Mr. Anderson:

Pursuant to the Notice of Claim dated June 6, 2018, a copy of which is attached hereto, notice is hereby given that my client, Vaun Waddell, will commence legal action within ten (10) days from the date of this letter unless prior thereto, he receives payment of the sum of \$47,808.00 as and for reimbursement for legal fees expended in his defense in the above-referenced action, and an agreement on the part of the City to defend and indemnify him from all future legal expense, costs and claims asserted in such action. As noted in such Notice of Claim, we believe the City was obligated to defend and indemnify Mr. Waddell from all claims in such action, as required under Idaho Code § 6-903, as well as common law master/servant principles.

It appears this litigation will continue and litigation expenses will continue to mount and we urge the City to immediately acknowledge its obligation under the State statute and common law. I also encourage you to tender this claim and demand to ICRMP, inasmuch as ICRMP may have a duty to pay such costs and assume such defense.

I look forward to your immediate response.

Sincerely yours,

Dale W. Storer
Attorney at Law

Enclosure

cc: Vaun Waddell

G:\WPDATA\DW\19641.01 Vaun Waddell (Lerwills II)\Correspondence\Anderson 2018.11.06.ltr.wpd:sm

Established in 1896

NOTICE OF CLAIM

Pursuant to Idaho Code §§ 50-219 and 6-907, Mr. Vaun Waddell, hereinafter referred to as "Claimant" submits the following Notice of Claim:

CIRCUMSTANCES GIVING RISE TO CLAIM: Refusal by Sugar City to defend and indemnify Claimant from all claims, actions, cause and attorneys fees arising from the filing of an action against Claimant by Jeff Lerwill and Ryan Lerwill, Madison County Case No. CV-18-352 ("Lerwill Complaint"), asserting certain alleged wrongful acts and omissions, arising out of Claimant's performance of his duties and responsibilities within the course and scope of his duties as a member of the City Council for Sugar City. Specifically, Claimant believes and asserts that the City wrongfully failed and refuses and continues to refuse to provide Claimant a defense and indemnification on account of such action, as required under Idaho Code § 6-903.

DESCRIPTION OF INJURY/DAMAGE: As a result of the City's breach of its duties, as aforesaid, Claimant has been required to provide his own defense and pay for his attorneys' fees in defending the Lerwill Complaint. Such injuries and damage continues to accrue as the defense costs in said action continue to mount. Future damages may also arise if and when the City refuses to indemnify Claimant for any damages awarded against Claimant in the Lerwill action.

TIME/PLACE OF INJURY: Claimant made a demand against the City on May 15, 2018, to provide such defense and indemnification, and the City has failed and refused to provide such defense and the City continues to ignore such demand.


AMOUNT OF DAMAGES: The amount of such damages is unknown at the present time and will depend upon the total amount of the defense costs incurred in such action and whether or not any award is made against Claimant in such action.

NAMES OF PERSONS INVOLVED:

1. Vaun Waddell, P.O. Box 523, Sugar City, Idaho, 83448.
2. Dylan Anderson, at Forsberg Law Offices, 49 Professional Plaza, Rexburg, Idaho, 83440.
3. David Ogden, P.O. Box 56, Sugar City, Idaho, 8348-0056.
4. Jeff Lerwill and Ryan Lerwill, c/o Jeffrey D. Brunson, Beard St. Clair Gaffney, 520 First American Circle, Rexburg, Idaho, 83440.

RESIDENCE OF CLAIMANT: P.O. Box 523, Sugar City, Idaho, 83448.

DATED this 6th day of June, 2018.



Dale W. Storer
Attorney for Vaun Waddell

The City of Sugar City, Idaho

Resolution No.: 2018 - 15

“A Resolution to Approve and Submit a Grant Proposal to the Local Highway Technical Assistance Council (LHTAC) Through Its Local Strategic Initiatives Program (aka Surplus Eliminator Fund) for the Purpose of Moving Highway 33 to Railroad Avenue and Straightening Out Front Street.”

WHEREAS, the Council of the City of Sugar City, Idaho desires to make the entrance into the City of Sugar City safer by having Highway 33 continue onto Railroad Avenue to Center Street in Sugar City, and then moving the Highway 33 designation to that road from the current designation down Front Street, and by making Front Street a true residential road; and

WHEREAS, LHTAC has indicated its desire to consider this change, and accept a grant application to help pay for this change, in the amount of \$416,000, through the Local Strategic Initiatives Program, which has a 0% match; and

WHEREAS, the Council of the City of Sugar City, Idaho is also willing to provide some match in the form of Pre-project engineering, and in-kind services to help groom and remove the unusable asphalt, in the estimated amount of \$33,000;

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SUGAR CITY, AS FOLLOWS:

The City Council of the City of Sugar City, Idaho hereby approves the submission of a grant proposal to LHTAC in its Local Strategic Initiatives Program for the reconfiguration of Highway 33 and Front Street in the amount of \$416,000 and authorizes the Mayor to execute any and all documents relating to the grant application.

PASSED by the Council of the City of Sugar City on this 8th day of November, 2018

APPROVED by the Mayor of the City of Sugar City on this 8th day of November, 2018.

(SEAL)

David D. Ogden,
Mayor

ATTEST:

Wendy McLaughlin,
City Clerk - Treasurer

The City of Sugar City, Idaho

Resolution No.: 2018 - 16

“A Resolution to Approve and Submit a Grant Proposal to the Local Highway Technical Assistance Council (LHTAC) Through Its Children Pedestrian Safety Program for the Purpose of Constructing Safe Pathways in the Downtown Area.”

WHEREAS, the Council of the City of Sugar City, Idaho desires to create a safer environment for children to walk to school and other places in the community, and to help increase the safety and health of all its citizens by providing a pathway system to take pedestrians off the roadways of the city; and

WHEREAS, LHTAC has indicated its desire to consider a grant application through its Children Pedestrian Safety Program which has a 0% match; and

WHEREAS, the Council of the City of Sugar City, Idaho is also willing to provide some match in the form of In-Kind services to help groom and install sprinkler systems or seed grass;

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SUGAR CITY, AS FOLLOWS:

The City Council of the City of Sugar City, Idaho hereby approves the submission of a grant proposal to LHTAC in its Children Pedestrian Safety Program for the construction of pathways in Sugar City in the amount of \$250,000 and authorizes the Mayor to execute any and all documents relating to the grant application.

PASSED by the Council of the City of Sugar City on this 8th day of November, 2018

APPROVED by the Mayor of the City of Sugar City on this 8th day of November, 2018.

(SEAL)

David D. Ogden,
Mayor

ATTEST:

Wendy McLaughlin,
City Clerk - Treasurer