

MINUTES OF REGULAR MEETING
SUGAR CITY COUNCIL
THURSDAY, FEBRUARY 14, 2019

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

Present: Mayor David D. Ogden; Clerk-Treasurer Wendy McLaughlin; Councilors Brent Barrus, Vaun Waddell, Joy M. Ball, and Bruce King; City Attorney Dylan Anderson; City Building Inspector Cliff Morris; Planning and Zoning Chairman Dave Thompson; Old Farm Estate Developer Ryan Lerwill, Developer Attorney Michael W Brown; *Standard Journal* Reporter Lisa Smith; Citizens Bruce Arnell; Sharon Bell, Craig Cobia, Timothy Frogue, Kevin and Kristin Galbraith, Matt Garner, Paul and Becky Jeppson, Kimber Jones, Barbara Lusk, Lori Ann Morris, Lawrence and Catherine Nielsen, Robert S Nielsen, Greg and Elaine Preslar, Ronald Smith, DeVerl Stoddard, Dela Th., and Burt and Kathy Whittington.

Councilwoman Ball read from city code 1-6-1, 2.10 concerning duties of the city council to “Ensure minutes of meetings are clear, representative, and accurate before approving and publishing them.” She asked that her suggestion for the January 10 minutes be included, as the minutes had been published without the suggested change to the State of the City Address given in council meeting. The mayor said he would add a sentence to the Jan. 10 minutes to reflect that change.

MINUTES: Mayor Ogden asked if there were any corrections to the minutes of the regular meeting held on Thursday, January 24, 2019. Each councilmember had a copy of the minutes prior to the meeting. It was moved by Councilman King and seconded by Councilwoman Ball to accept the minutes as amended; motion carried.

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

Wendy presented the current bills in the amount of \$128,039.65. It was moved by Councilman Barrus and seconded by Councilman Waddell to pay the current bills, together with all regular February bills; motion carried.

2018 AUDIT REPORT: No report

MONTHLY MAILER LETTERS: Councilman Waddell presented a letter entitled “Notes to the People from City Council” (see Attachment #1). He requested that it be sent out in a separate mailing on city letterhead no later than next Tuesday, February 19, 2019.

There were several concerns from Councilman Barrus and Mayor Ogden some of which are noted below:

- Not in the best interests of the City (confusing and dividing citizens) as statements from the Mayor and Councilmen do not agree
- Inappropriate to use the City as a political platform to promote an agenda

Councilors Ball, King, and Waddell felt it to be appropriate because:

- It is appropriate and right they clarify issues the public has questions about
- The citizens would be more informed with a better representation of both sides of an issue

Councilman King reminded the Mayor and the Council that “if the Council desires to issue a statement, it can”. Councilman Waddell added his motivation to have a monthly mailer letter is not to further a political agenda to run for mayor. And in fact has “no desire to run and would not accept the position if it was offered”.

MOTION: It was moved by Councilman Waddell and seconded by Councilwoman Ball to send this letter out in a separate mailing by February 19, 2019.

AMENDED MOTION: It was moved by Councilman King and seconded by Councilwoman Ball to amend the motion until later tonight so at the break Councilman King could read it through and make some revisions; motion carried.

Later Councilman King made four revisions to soften the wording of some statements in Councilman Waddell’s letter. City Attorney Dylan Anderson cautioned about the letter being put on city letterhead because of legal ramifications.

MOTION: It was moved by Councilman Waddell and seconded by Councilwoman Ball to send the letter out on city letterhead, with the four changes justified by Councilman King and dated and signed from the Council. Motion carried. Thereupon the clerk called roll upon the motion.

Those voting aye: Councilors Ball, King, and Waddell

Those voting nay: Councilman Barrus

Motion carried.

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

Thomas Scott (Mission Shoe): Made some minor improvements to the outside design of the building noting the 70/30 outside covering split.

Final Plat Process: Still in process. No progress. They barely have a quorum sometimes.

Land Use Schedule: Still in process. Again, a public hearing date is hoped to be set soon. A Work meeting has been scheduled for Saturday, February 16.

City Code 9-1-3 and 9-1-4: Still in process. Again, a public hearing date is hoped to be set soon.

Development Interest: Dave reported that one or two developers contact him each week.

Sound System: Dave is working on a sound system that will include microphones on the podium with recorders.

EXECUTIVE SESSION:

Councilman Waddell read a brief statement (see Attachment #2);

7:35 P.M. It was moved by Councilman Barrus and seconded by Councilman King, pursuant to Idaho Code 74-206 1 (f), "Legal counsel on pending or imminently likely litigation, not merely when legal counsel is present," and to move into executive session. Motion carried. A roll call vote was inadvertently overlooked, but will be corrected at the next council meeting.

8:45 P.M. The executive session ended for Idaho Code 74-206 1 (f). No decisions were made and there was no deliberation.

SETTLEMENT AGREEMENT: Councilors Brent Barrus and Joy Ball approved the settlement agreement (see Attachment #3) and ratified the mayor's signature. City Attorney Dylan Anderson stated that Councilman King did not participate in the discussion of the settlement agreement because of his involvement.

Councilman Barrus stated his feelings and thoughts on why he approved the agreement. Old Farm Estates Division #3 will be restricted to 540 units in density. Anything above a 4-plex will be considered an apartment. Councilman King has agreed and signed the agreement and will be paid \$35,000 for his legal fees plus \$5,000 if Councilman Waddell signs the part pertaining to him. The stay has been lifted so the city can go forward with a public hearing. The city has agreed to give a unit discount of \$2500 as an incentive. In turn the Developers Jeff and Ryan Lerwill will agree to drop the \$9 million tort claim against the city, if not approved they will go ahead with the law suit. A public hearing will need to be held for the changes in the zone application.

Councilwoman Ball stated her feelings and thoughts on why she approved the agreement. Hookup fees would be \$2,500 less than the standard prevailing price. Hook-ups per residence are currently about \$5,500. The loss to the city is about \$1,350,000 but it is money that is only owed if growth occurs. The agreement would help mend our city which has been torn apart. Some will be happy and some will be upset. Litigation is a hard thing for all concerned. In order for our community to heal, we need to take some action. By accepting this settlement all of the litigation will go away. With amended zoning and the Lerwills showing good faith, this makes it more in line with what many citizens desire. The zones will allow for some buffering. We need to heal and move forward. There will be questions about the settlement agreement. The code will have to be followed.

Catherine Nielsen – Point of Order – State Statute 74-206 violation – denied – will have an opportunity to speak at the public hearing

Lawrence Nielsen – Councilman Barrus is biased and should not be able to vote on the agreement – denied – Councilman Barrus was not accused or shown to be biased in the judgement.

MOTION: It was moved by Councilman Barrus and seconded by Councilwoman Ball to approve the settlement agreement and ratify the Mayor's signature. Thereupon the clerk called roll upon the motion.

Those voting aye: Councilors Ball, and Barrus

Those voting nay: None

Councilmen King and Waddell abstained. Motion carried.

OLD FARM ESTATES PUBLIC HEARING DATE: After the Mayor stated a public hearing needed to be held on March 6 and that arrangements had already been made to use the High School Auditorium, the council set Wednesday, March 6, 2019 for the public hearing. It will be held at the Sugar Salem High School auditorium at 6:30 p.m. Lerwills will have a more detailed map of their plans for Division #3 for the public.

MOTION: It was moved by Councilwoman Ball and seconded by Councilman Barrus to set a public hearing for Wednesday, March 6, 2019, at 6:30 p.m. Thereupon the clerk called roll upon the motion.

Those voting aye: Councilors Ball, and Barrus

Those voting nay: None

Councilmen King and Waddell abstained. Motion carried.

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

Water Tank Well Update: City Building Inspector Cliff Morris reported that the construction of the tank is moving forward. The tank is being readied with rebar for the cement wall lining inside the polyurethane shell. The well is down about 40 feet with two casings at 24" diameter.

Waterline Update: Mayor Ogden reported for City Public Works Director Arlynn Jacobson that MD Construction is still trying to get a clean water sample on the Moody line.

Annexation: An application has been prepared and ready to present to the Planning and Zoning Board.

SCADA System: Public Works Director Arlynn Jacobson has been working on final bids to install the system on wells numbers one and two and the sewer south lift station.

LED Lights: Mr. Jacobson has also been working with Laramie Eckman of LKE & Sons Ag to start the lights switch. Laramie would rather work in the cold weather without the wasps than wait for warmer weather. LED lights are more efficient and have better direction control.

Attorney and Staff Meetings: It costs the city \$6,600 in 2018 for the Attorney to attend staff meetings and would like to continue to have the attorney present since it is more efficient. Councilwoman Ball noted that as per the September 13, 2018, city council meeting the mayor had stated "Our staff meetings are there merely to coordinate what we do as a city in and of itself. It's not a meeting where we discuss legislative issues or land use issues or anything like that. It's merely a coordination meeting so that our staffs—we can coordinate between staff on those things we need to do." With that definition, Councilwoman Ball was confused as to why an attorney needed to be at the staff meetings. The mayor said that sometimes there are some administrative things that need to be taken care of. Councilwoman Ball suggested that perhaps items requiring the attorney being present could be consolidated, thus saving the city some attorney fees.

Sugar Days Celebration: Councilwoman Ball will follow up with the Tree and Beautification Committee to begin planning the Sugar Days Celebration.

DEPARTMENT REPORTS:

COUNCILMAN BARRUS: No report

COUNCILMAN WADDELL: No report.

COUNCILWOMAN BALL: No report

COUNCILMAN KING: No report

Meeting adjourned at 9:25 p.m.

Signed: _____
David D. Ogden, Mayor

Attested: _____
Wendy McLaughlin, Clerk-Treasurer

Notes to the People from City Council,

Democratic Government at Every Level of Government

Enumerated Powers: If an officer is not given a power by law, he does not have that power.

Government and its powers belong to the people, not the other way around.

Separation of Powers: according to branches of government, through checks and balances.

Policy Statements agreed to in City Council

The City Council represents the people and follows the comprehensive plan and code.

Oath of Office: Support the Laws and Ordinances of the City of Sugar City.

The City Council seeks and promotes varied growth in the city, managed according to law.

Consistent with the comprehensive plan and code.

Adherence to law is the best way to heal the community and build the city.

The word "law" contemplates Idaho state code, Sugar City comprehensive plan and code.

Addressing Questions

Under state and city law, the City Council determines policy and establishes laws. The mayor executes laws and policies. Council members do not have executive powers, and the mayor does not have power to set policy.

The letter from Mayor Ogden dated January 23, 2019, purports to represent "the City," saying that "the City has agreed to issue a letter." As is true of all the mayor's letters, there was no "agreement" because the letters were not approved by the Council or discussed in Council. Illustration of the letter not being an instrument of "the City" is stated in the final paragraph of the January 23 letter: "I hope this information helps you. It is not my intent to discuss.... If you have further questions, please feel free to contact me" (underline added).

A Question from Citizens: Why do Councilmen King and Waddell ask the City to pay attorney fees?

The fees have little connection with Citizens for the Rule of Law, which ceased activity in April 2018.

The fees are for defense against a suit by Old Farm Estates owners (OFE), filed in May 2018.

OFE owners sued the City of Sugar City and the two councilmen to prevent them from voting on OFE matters.

The mayor and city attorney, without bringing the matter before the Council, submitted a brief to the court apparently siding with the suit even though the City was named a defendant in it.

The tort claims act and common law traditionally require a city to defend members of the administration who are sued over actions in office.

Having supported the mayor in the suit against the councilmen, the city attorney appeared to be in a conflict of interest preventing him from defending the councilmen.

The councilmen defended themselves with independent legal counsel, as the city attorney advised them to do.


Councilmen King and Waddell therefore request that the City pay their attorney fees.

Matter of Public Interest

Rexburg is preparing to make a dogleg on Idaho Highway 33 north of Horkley's corner that would create two new turns and two new traffic lights in the journey from Sugar City into Rexburg. The Council has requested details of the plan from Rexburg, but until now has not received a reply.

Residents can review information at the city office and make their thoughts known to the Council.

Approved by the City Council on February 14, 2019


Vaun Waddell
President of Sugar City Council

Votes in City Council

Vaun Waddell – Yea

Bruce King – Yea

Joy Ball – Yea

Brent Barrus – Nay

Recusal Statement by Vaun Waddell

Before we proceed with the next agenda item, I wish to recuse myself from participating in any discussion, deliberation or voting concerning the Settlement Agreement referenced in tonight's Agenda. Although I will not participate in discussions concerning the Settlement Agreement or any voting with respect thereto, I will attend the executive session because the Settlement Agreement contemplates my joinder upon certain conditions being met. I have made no decision at this time whether or not to become a party to such Settlement Agreement.