

**MINUTES OF REGULAR MEETING
SUGAR CITY COUNCIL
THURSDAY, FEBRUARY 28, 2019**

Presiding: Mayor David D. Ogden
Meeting Convened: 6:30 p.m.

Prayer: Bruce King
Pledge of Allegiance

Present:

Mayor: David D. Ogden
Deputy-Clerk: Shelley Jones
Clerk's Assistant: Sharon Bell
Councilors: Joy Ball, Brent Barrus,
 Bruce King, Vaun Waddell
Public Works Director: Arlynn Jacobson
City Attorney: Dylan Anderson
Planning & Zoning Chairman: Dave Thompson
City Engineer: Dick Dyer

City Building Inspector: Cliff Morris
Forsgren Engineering: Randy Johnson
Standard Journal Reporter: Lisa Smith

Citizens: JoAnn Clark, Spencer & Miriam Cook, Tim
Frogue, Paul & Becky Jeppson, Grant & Linda Johnson,
Kimber Jones, Jocelyn Kam, Elaine King, Barbara Lusk,
Jill Moss, Lawrence & Catherine Nielsen, DeVerl
Stoddard, Russell Thurston, Mary Lou Wilding

The mayor pointed out the new city logo on the wall behind the council, which was installed yesterday. He shared appreciation for Vital Signs doing the work for us.

MINUTES: Mayor Ogden asked if there were any corrections to the revised minutes of the regular meeting held on February 14, 2019. Each councilor had a copy of the minutes prior to the meeting.

MOTION: It was moved by Councilman King and seconded by Councilman Barrus to accept the minutes as amended; motion carried.

6:37 P.M. 2018 CITY FINANCIAL AUDIT/DANA IZATT - ACTION ITEM – No report.

6:38 P.M. PLANNING AND ZONING (P&Z) COMMISSION REPORT:

Chairman Dave Thompson reported on the February 21, 2019, meeting. See P&Z minutes for details.

- Roxy's Cake Shop Business License – approved
- Idaho Highway 33 Annexation - tabled until additional information is provided to the commission.
- Old Farm Estates – Townhomes – addressed setbacks.
- Land Use Table and Maps – discussion no report
- City code Update – discussion no report
- Plat Process – no report

6:43 P.M. MODIFIED ERU SCHEDULE (EQUIVALENT RESIDENTIAL UNIT) FOR LARGE USERS - ACTION ITEM

This item was tabled for further discussion. The mayor said this will not be addressed tonight until more information is received to find out what the city's permit from the state allows it to do. The council discussed at length the pros and cons of a special rate for large users and had several questions for Randy Johnson of Forsgren and Associates.. Listed below are items discussed.

- Current ERU rates are inaccurate for heavy users
- Rate would be calculated from pipe size recommended by Engineer Randy Johnson
- Culinary water may be used for industrial purposes as long as businesses are within the city
- Fairness to residential users

6:50 P.M. MOVE NEXT COUNCIL MEETING TO WEDNESDAY, MARCH 13, 2019 - ACTION ITEM

The mayor asked to change the council meeting scheduled for March 14 to March 13 due to the Farmer's Merchant Banquet on March 14; therefore, a special meeting has been scheduled for Wednesday, March 13, at 6:30 p.m.

7:07 P.M. IMPACT CONNECTION FEES

Mr. Johnson presented a table to the council to determine connection fees and stated he researched the value of all city assets and remaining useful life of its system, which makes a depreciated value of the system. It is different than replacement costs. It is assessing the current value. This is the value of the system right now. For example, if there is a \$10,000 part and it lasts 10 years, if it is 9 years old that means the part has a current value of \$1,000.

Mr. Dyer addressed the council, saying he took the existing value of the system in 2016 and then inflated it to 20 years in the future. We do a major upgrade every 20 years. Then we decide cost by the capacity in the system. The cost was \$2.90 of what was invested in the system to deliver 1 gallon of water per day to each household in town and includes other administrative costs necessary. This is how the city arrived at the current \$3,400 connection fee value, which is the cost or investment per gallon. With the average of 3.6 people per household in Sugar City, the normal domestic use per day is 841 gallons per day. Multiply this by 2.9 gallons of cost and we arrive at \$2,400 to \$2,500 in selling capacity and then add on inspection, meter, and administration costs. This is how we came up with the \$3,400 cost we currently use.

The mayor stated we are looking at the costs because we charge this for each installed meter. If there is a four-apartment unit with one meter, it would still be \$3,400. How do we look at major users? We want to look at larger users as the impact is larger, but we are still only charging the \$3,400. Do we need to change this? How do we deal about 4- or 6-plexes? Are we undercharging for connection fees? We are collecting some of it in the base rate. Mr. Johnson's calculations arrive at \$2.68 per gallon versus the \$2.90 that Mr. Dyer arrived at in 2016.

Councilman King asked about meter sizes for a 4-plex. Public Works Director Jacobson stated some use 1 inch, which is a little small. Mr. Dyer said the city should use 1-1/2 to 2 inch meters.

The engineers suggested the city change to ERUs not meters. Mr. King asked what percent of the connection fees of \$5,800 goes to impact fees? Mayor stated there is 30 percent depreciation in the \$5,800. Mr. Dyer said that the city is collecting from the existing system users not new connections.

King noted the council budgeted \$10,000 for establishing formal impact fees and that this could be a better long-term approach to collecting impact fees than through assessing such charges in water connection fees. The mayor stated that to have a formal impact fee, the community would have to vote on it. King said he has pushed for an impact fee over the years and now may be time to implement one.

Attorney Dylan Anderson stated this could be tedious; arranging for voting can take a lot of time. If the timing is right, it could be good. It was suggested the engineers ensure there is an industry standard for what the city charges. State statute requires that fees assessed be related to the actual cost of utility services or they become an illegal tax.

The council will discuss impact fees at the next regular meeting.

7:25 P.M. BREAK

7:30 P.M. RE-VOTE ON LAST MEETING'S EXECUTIVE SESSION - SETTLEMENT AGREEMENT OF SUGAR CITY, LERWILLS, & KING SS 74-206(F) - ACTION ITEM

The mayor said at the last meeting we didn't have a roll call vote for entering executive session. Since then, we have received a letter stating three possible concerns that Attorney Anderson addressed.

- 1. Motion going into executive session did not contain a purpose or topic summary.

Attorney Anderson said we did everything right. Councilwoman Ball talked about City Code 1-6-2 G.3 ("...agenda notice shall...state the reason and the specific provision of law authorizing the executive session") and suggested when making a motion to go into executive session we could likewise state the same reason as written on the agenda but not be so specific as to give away the object of the executive session.

- 2. We did not do a roll call vote.

We did not do a roll call vote, and statute says we need it. It was a technical error, but an open meeting law violation. There is a \$250 fine for an open meeting law violation. The statute allows this to be cured. If there is an action based on the vote, such actions shall be void. A cure can be to void the action. In this case, it was an executive session, so

there is no action to cure.

Councilwoman Ball asked for a clarification of “if an action leads to an action.” Didn’t the action of the executive session lead to what happened with the settlement agreement? Mr. Anderson said the executive session didn’t need to happen. It wasn’t a prerequisite to the Settlement Agreement. Councilwoman Ball asked: “Didn’t the action of having the executive session lead to the action of passing the Settlement Agreement?” Mr. Anderson replied, “Not necessarily. We didn’t have to have an executive session. We could have just voted on it.” Ball: We didn’t have to, but we did.” Anderson: “Right, but there was no deliberation or decision making. This is just my interpretation of the law. The settlement agreement could have been accepted without an executive session.

- 3. Public was not allowed to comment after executive session.

Ball stated we should apologize to Catherine Nielsen, who wanted to make a comment and was not allowed to do so. Maybe she would have reminded us about a roll call vote. Mayor also apologized. However, Lawrence Nielsen was allowed to speak but did not address a roll call vote. Mayor Ogden stated that we want to acknowledge the mistake and cure this. This is why Mr. Anderson is weighing in on this. Councilmen King and Waddell have more experience with this but were under court order not to participate.

King, however, stated that the Nielsen memo raising concerns has merit, but the letter given to the council from Attorney Anderson also has merit. He wants to do the right thing.

Barrus asked, “What is the cure?”

Anderson stated that the cure would be to accept an open meeting law violation.

The mayor stated that we have declared the error. We now have 14 days from today to declare any actions arising from the executive session void, but we made no such actions. We want to acknowledge the issue and cure it.

It has been declared there was an error. Statute has been satisfied.

Councilwoman Ball felt she was not completely informed on the settlement agreement in the executive session. She expected more paperwork on the amended zone change, and this is not what she understood from the session, which affected her comments with what was going to happen for the public hearing.

King asked why Waddell was conspicuously silent, and was curious what he thinks about this. Waddell stated he was enjoined from participating in the issue. Mayor noted that this is directly linked to the litigation and rezone application.

Ogden provided an explanation of the legal issues, stating that he does not have a say, unless there is a tie. He hasn’t had to break a tie and hopes he doesn’t have to. The purpose of the executive session was to learn information about the mayor’s signature and terms of the settlement agreement.

Mayor Ogden stated the process of what we have gone through in this zoning application. P&Z received an application, and over time, working with the developer, the application became complete. It was determined complete and recommended to the council. Council members held another public hearing because of some concerns. The council adopted it.

The mayor acknowledged the mistake of not recording the decision-making meeting. This doesn’t mean the decision was wrong, it just didn’t get recorded. The judge remanded the action to the council to correct the mistake by holding a meeting and recording it and remaking the decision. We have been trying to do this, but litigation got in the way, so it’s been a long and difficult process. There are a lot of feelings on both sides of the issue. The judge partially lifted the stay to enable a public hearing on the proposed amended rezone application. We now have to hold the public hearing. This is about a court order. The executive session was to provide information on the settlement agreement, not dictate a decision. If we don’t adopt the proposed agreement, litigation continues. We need to get this settled, cure the default, and move forward.

Barrus believes the settlement agreement constitutes the amended rezone application. The agreement sets forth changes to the pending rezone application, has a legal description, and has the zones and conditions. Mr. Barrus read details from page 3 of the settlement agreement. “We approved the settlement agreement; now we need to have the public hearing. The agreement states what is amended. This is the information we needed to go forward.”

Ball said it concerns her when we talk about applicable local, state, and federal law.

Barrus stated that the attorneys had gone through this. “We did make a mistake not having a roll call, and we have acknowledged this. This doesn’t affect the settlement agreement. In the executive session we just got information; we didn’t make a decision.”

Ball said that was her concern. We got information but she felt like she got incomplete information. She said maybe she should have said, “Let’s go through this paragraph by paragraph so I could understand” – but she didn’t.

8:20 Councilman Barrus moved to acknowledge the error of not taking a roll call vote before entering executive session put that acknowledgment in the minutes, and go forward.

Councilwoman Ball seconded the motion.

A roll call vote was taken.

Those voting nay: Councilwoman Ball

Those voting aye: Councilman Barrus

As a result, there is a tie vote.

Mayor Ogden: “This is a tough one. This is not a position I ever wanted to be in. No matter how I vote there is going to be blame. There has been a lot of it out there. We have had wards divided. We have had people accusing people of all sorts of things, true or not. I have done my best to stay neutral in it and to protect the city. I have worked along with Dylan (Anderson) and Bill (Forsberg) to do that because we have been called a defendant on both sides. We have been sued by Citizens for the Rule of Law and then by the developers. We have been in the middle on every turn. We did make a mistake – we didn’t record a meeting and then we made another one, we didn’t have a roll call, which we are going to cure tonight. But why should that stay in the path of moving forward as we are required to do by law. We have a court order that says we must redo this and we’ve been trying to do it. We don’t need to fight over this any longer. We need to heal. We need to accept the fact that we need to have a public hearing and make a decision. We need to sit down and decide what to do and move forward and accept the opinion of the City Council, which they are authorized to do by code to vote on these issues. We have an application in front of us and it’s been amended by the settlement agreement. The settlement agreement is the amended application. It contains all of the documents necessary. We are only assigning a zone; it has nothing to do with the buildings, the density, or anything else, and we are assigning a zone which has already been established by code and by law. The City Council has an obligation to respond to the applicant on this. If we don’t, we are in violation of our own code. We just need to move forward and we need to stop what’s been happening. Because of that, **I am going to vote ‘aye’ on the motion and declare that the motion carries and that we have cured the default**, and we will move forward with the public hearing where you are all going to have an opportunity to voice your opinion.”

8:25 Deciding vote: Mayor Ogden voted aye, motion carried.

A local attorney will conduct the public hearing based on the law and how it needs to be implemented. We will listen to everyone at the public hearing and then there will be a vote.

EXECUTIVE SESSION - COUNCILMAN WADDELL’S TORT CLAIM-SS 74-206(±) - ACTION ITEM

8:25 p.m.

It was moved by Councilman Barrus and seconded by Councilwoman Ball, pursuant to Idaho Code 74-206(1f) (legal counsel on a pending or imminently likely litigation, not merely when legal counsel is present), and to move into executive session. The mayor called for a roll call vote:

Those voting aye: Councilors Ball, Barrus, and King

Abstaining: Councilman Waddell

Thereupon the mayor declared the motion carried with no less than two-thirds vote.

9:10 p.m.

The executive session ended for Idaho Code 74-206(f) and the regular council meeting reconvened. No decisions were made and there was no deliberation.

COUNCILMAN WADDELL'S TORT CLAIM:

Any further action was tabled on this item until more information is received. Councilman Barrus gave the audience some information to let them know what has been going on concerning this agenda item from his perspective:

April 13 -- Judge Moeller remanded it back to the city to revote and hold a public hearing.

April 26 – Judge awarded attorney's fees to Citizens for the Rule of Law: \$27,000 – \$25,000 for attorney fees, plus \$2,700 for court costs and mileage.

May 10, 2018 – This had been remanded back to city to revote on it. Vaun gave us a witness statement and recused himself. Bruce had been recused up to this point and he un-recused himself; so we couldn't go forward.

May 14, 2018 – Lerwill's sued Vaun Waddell as an individual, Bruce King as an individual, and the City of Sugar City.

August 2, 2018 – Judge Moeller ruled: Vaun and Bruce did have a bias and could not vote in deliberation concerning OFE application on Division #3 on the pending application.

November 9, 2018 – King, joined by Waddell, made a motion for the judge to reconsider; and that reconsideration was not done until December 31, 2018.

December 31, 2018 – Judge Moeller again said that both Bruce and Vaun were biased, and they asked for permission to appeal and were denied.

January 7, 2019 – Vaun asked for a hearing. Judge Shinderling issued summary judgment to Lerwill's to make the recusal permanent on Vaun Waddell.

Since May 14, 2018, those are some of the fees that we are looking to pay for Vaun and Bruce. We paid Bruce \$35,000 because he settled. With Judge Shinderling's ruling, Vaun could not participate in the settlement. They had an option for him to sign a joint agreement, and he said he would not. In the *Standard Journal*, February 22, 2019, Vaun was adamant that he would not sign any agreement. In June, there was a request by his attorney to ask the city to pay his attorney fees. They weren't suing the city, but in November 2018 they asked the city to pay their attorney's fees of nearly \$48,000 and any future attorney fees. We have only seen \$48,000 as a sum – and not a breakdown of what fees were and when they were acquired. The Lerwill could sue Vaun for attorney fees. We don't know how much future attorney fees would be. I do think we need to hold off, because Vaun's attorney said his fees could continue to mount. The city's insurance provider ICRMP said in this type of situation they will not pay this.

MOTION: It was moved by Ball and seconded by Barrus to table the issue until we receive further information.

The mayor will work with Dylan and the attorneys involved, seeing if we can obtain the information needed; at least an itemized list of when fees occurred and what they were for.

Roll call vote:

Councilman Barrus: aye

Councilwoman Ball: aye

Councilman Waddell: abstained

Councilman King: Legal counsel advised him not to participate.

Motion carries.

9:20 P.M. MAYOR'S REPORT: MAYOR OGDEN REPORTED ON THE FOLLOWING ITEMS:

Farmer Merchant Banquet: Banquet will be held Thursday, March 14, 2019, 6:00 p.m.

Website Redesign: Discussion on looking at a possible new design for the city's website. King noted that the city had spent a lot of time and money on the website years ago, and it would be hard to convince him that a lot of changes are needed now. He likes the website we have now, which he thinks is versatile, reasonable user friendly, and economical.

Veto of Vote on Councilman Waddell's Letter Approved Last Meeting: Vaun presented a letter last meeting. A vote was taken to send it out on city letterhead at city expense. Several days later, Mayor Ogden prepared a veto on that. He felt he needed to report the veto and what his reasoning was.

YMCA: They finished a feasibility study at their expense in order to determine whether to come to Sugar City. We have been talking with them about two years. So far, the city has made no financial commitments to that. One of the things they do is ask citizens to donate for projects they may undertake. They have grant sources. A link to donate is on the city's website.

DEPARTMENT REPORTS:

COUNCILMAN BARRUS: No report.

COUNCILMAN WADDELL: No report

COUNCILWOMAN BALL: The Tree and Beautification Committee met last night but had no quorum. They did mention they had questions about the budget for Arbor Day as well as Sugar Days. They will be talking to the high school about flower barrels for the city this summer.

COUNCILMAN KING: No report.

Meeting adjourned at 9:30 p.m.

Signed: _____
David D. Ogden, Mayor

Notes