

MINUTES OF REGULAR MEETING  
SUGAR CITY COUNCIL  
THURSDAY, MAY 10, 2018

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

Present: Mayor David D. Ogden; Clerk-Treasurer Wendy McLaughlin; Councilors Brent Barrus, Vaun Waddell, Joy M. Ball, and Bruce King; City Public Works Director Zane Baler; Planning and Zoning Chairman Dave Thompson; City Attorney Assistant Dylan Anderson; Madison County Sheriff's Captain Cameron Stanford; City Code Enforcement Officer Becky Edwards; City Building Inspector Cliff Morris; Old Farm Estates Developers Jeff and Ryan Lerwill; Old Farm Estates South Fork Villa Developer Ray McDougal; Beard St. Clair Gaffney Attorney Michael W. Brown representing Jeff and Ryan Lerwill; Holden Kidwell Hahn and Crapo Attorney Dale Storer representing Citizens for the Rule of Law; Elaine King, Richard and Kathleen Rembish, Craig Adams, Bruce Arnell, David Barnes, Sharon Bell, Shawn Clark, Kevin and Kristin Galbraith, Necia Hoopes, Kimber and Shelley Jones, Barbara Lusk, Bert McLaughlin, Craig Morgan, Catherine Nielsen, and Jon and Taylor Turner.

**MINUTES:** Mayor Ogden asked if there were any corrections to the minutes of the regular meeting held on Thursday April 26, 2018. Each councilman had a copy of the minutes prior to the meeting. It was moved by Councilman Barrus and seconded by Councilman Waddell to accept the minutes, with "colluding" replaced with "discussing city business" at the end of the second paragraph on page one and adding "which constituted a quorum of the City Council" after April 24 in the first paragraph on page one; motion carried.

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

Wendy presented the current bills in the amount of \$103,436.69. It was moved by Councilman Barrus and seconded by Councilman Waddell to pay the current bills, together with all regular May bills; motion carried.

Councilwoman Ball noted that the city is spending about \$20,000 for a code enforcement officer but little revenue was coming back from fees to offset the cost. The mayor explained that she is not on duty 24 hours a day seven days a week but that she was working on enforcing the parking code and loose dogs, etc.

Councilman Barrus noted that the Citizens for the Rule of Law had filed a petition to be awarded attorney fees of \$71,000. He wondered how the city would be affected if it had to pay those costs.

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

**Design Review:** The Design Review Board met and approved the Jensen’s Drywall five-unit shop planned in the business park. Jon Gregory has also agreed to bring up to standard the landscaping requirements around the Frito Lay building and comply with the Business Park Covenants, Conditions, and Restrictions (CC&Rs) on parking.

**Proposed Amendments to Planning and Zoning:** No report.

**Impact Area Expansion Report:** Dave reviewed with the council the area of impact expansion, which would include northern frontage along U.S. Highway 20 and west and east of 2<sup>nd</sup> East, potentially running to the Sugar Salem School District #322 school boundary. The expansion proposal meets the mathematical formula for build out required by the county, is supported by local residents and developers, and is critical for positive growth in Sugar City. However, since the area is also of interest to the City of Rexburg it will require a nine-man committee – three from each entity (City of Rexburg, City Sugar City, and Madison County) – to work out details. The final decision will be made by the county.

**Old Farm Estates Planned Unit Development for Cottage Homes:** Has been put on hold for the lawsuit.

**New Commissioner Update:** Planning and Zoning has recommended more names, including Paul Jeppson, to the mayor to fill at least one empty seat.

**IMPACT AREA EXPANSION AND RECOMMENDATION:** The council discussed taking advantage of an opportunity that could greatly benefit Sugar City’s commercial needs and interests and felt to go forward as soon as possible to form a committee to expand Sugar City’s impact area.

**MOTION:** It was moved by Councilman King and seconded by Councilman Waddell to approve Dave Thompson, Sean Bartholick, and a third commission member to represent Sugar City at the required nine-person board to consider Sugar City’s request to increase its impact area to include area north and west of the Rexburg North Interchange to the Sugar-Salem school district boundary line; motion carried.

**NEW PLANNING AND ZONING COMMISSIONER:** The council discussed the mayor’s appointment of Tyler Hoopes and Crystal Tillary’s withdrawal to serve as commissioners on the Planning and Zoning Commission.

**MOTION:** It was moved by Councilman Waddell and seconded by Councilman King to ratify the appointment of Tyler Hoopes to the Planning and Zoning Commission; motion carried.

**AMENDMENT ADOPTION TO BILLING PROCEDURES:** The council moved to adopt Ordinance No 332\_2018 to correct billing procedures to match what is currently being practiced.

**ORDINANCE NO. 332\_2018 (Utility Billing and Collection Amendment):**

Ordinance No. 332\_2018 was introduced by title only by Councilman Barrus entitled:

**“AN ORDINANCE AMENDING THE CURRENT SECTION 7-1-2 (B) BILLING AND COLLECTION, FOR THE SUGAR CITY MUNICIPAL CODE, AND PROVIDING WHEN THIS ORDINANCE SHALL BECOME EFFECTIVE.”**

It was moved by Councilman Barrus and seconded by Councilman Waddell to waive reading of the ordinance on three different days and to place it upon its final passage. Thereupon the clerk called roll upon the motion.

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

Thereupon, the mayor declared that the motion, having been passed by not less than two-thirds of the council, had been duly carried. It was moved by Councilman Barrus and seconded by Councilman Waddell to adopt this ordinance. Thereupon, the clerk called roll upon the motion.

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

Ordinance No. 332\_2018 was thereupon declared by the mayor to have been duly passed by not less than two-thirds of the council. The clerk will publish Ordinance No 332\_2018 in summary or full immediately in at least one issue of the *Standard Journal*, a newspaper published in the city of Rexburg, Madison County, Idaho.

#### **OLD FARM ESTATES DIVISION #3 ZONING APPLICATION REMAND:**

Before Mayor Ogden could introduce the item, Councilman Waddell recused himself from participating as a council member in order to be a witness and took a seat in the audience. He asked that his written statement (Attachment #1) be entered into the record..

City Attorney Dylan Anderson explained that the purpose of the agenda item was to create a transcribable record of the deliberations and the ultimate decision of the City Council. He said that even though there were previous deliberations, they are not reviewable and what was created today would be the transcribable record. The council was not to rely on previous discussions or deliberations. Mr. Anderson also stated that the City Council had been given the charge to review the previous documents and “come today prepared to deliberate on the proposed zone change and make a decision.” City Council members received emails with attached documents and audio files to review in order to be prepared for the Old Farm Estates agenda action item. City Attorney Dylan Anderson explained that the purpose of the agenda item was to create a transcribable record and that the council had been charged to review records.

The mayor, city attorney, and Councilman Barrus believed Judge Moeller’s judgment of remand to the City Council meant that the city redo the May 2017 meeting with the same facts before them as before the council one year ago and make a transcribable recording of the meeting.

As the mayor tried to move forward with the discussion, Attorney Dale Storer objected several times, including stating that he had requested this to be placed on the council’s agenda, to which Mayor Ogden replied, “I’m sure you’ve instructed them what to say.” The mayor reminded Mr. Storer several times that his participation from the audience was not appropriate.

Councilman King also stated that he wished to take part in the discussion, noting that on July 13 of last year he recused himself from deliberations and voting on the legal challenge before city, that the legal challenge was now over, and that therefore his recusal was ended. He requested that the city ask the judge his meaning of “remand,” without which the council did not know how to proceed.

Councilwoman Ball asked for more direction as to the meaning of the remand. She said she thought the city was getting the cart before the horse again and that before taking action we

needed information on how to proceed.

Councilman King noted that the judge remanded the matter to the city council. The Council is to decide how to proceed and can't proceed responsibly until we know the meaning of Judge Moeller's remand.

Mayor Ogden said he was not commenting on any of this, that he had his opinion but that his opinion was not valid and we each could interpret it as we saw it.

City Attorney Anderson said it would be possible to amend the agenda and that it may be wise to table the Old Farm Estates item.

**MOTION TO AMEND AGENDA:** It was moved by Councilman King and seconded by Councilwoman Ball to amend the agenda to include an item entitled "Judge Moeller's Meaning of 'Remand' in His Ruling on the Lawsuit – Action Item"; motion carried, with votes in favor by Council members King and Ball. Councilman Barrus voted against the motion.

**JUDGE MOELLER'S MEANING OF REMAND AND HIS RULING ON THE LAWSUIT:** Councilman King felt that until the judge's meaning was obtained, it was not possible to move forward intelligently on the zoning-decision remand.

**MOTION:** It was moved by Councilman King and seconded by Councilwoman Ball to request written clarification of Judge Moeller's meaning regarding his remand of the May 25, 2017, decision of the City Council to approve zoning and preliminary plat applications for Old Farm Estates Division #3; motion carried, with his and Councilwoman Ball's votes in favor, Councilman Barrus voting against.

Councilman King said that, until the judge's meaning was obtained, he didn't see any need for further discussion on the 7:50 p.m. agenda item.

Councilman Barrus asked if it would be possible to make a motion "to approve this ordinance." Mayor Ogden replied that, with a majority of the council voting to table the item, the item was tabled.

Councilwoman Ball stated that she wants to see the Lerwills succeed but wants the city and the developers to follow procedure and law.

Councilman King said he wondered whether the judge's decision invalidated the plat approvals, that he didn't see how invalidating the one doesn't invalidate the other. He referred to title 10-5-2-D of the Sugar City Code.

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

**Recording Each Council Meeting/Microphones at Each Seat:** The mayor is looking into getting microphones at each council seat to enhance recordings and the awkwardness of passing a mike around. Paper shuffling is a distraction on some recordings.

**Eastern Counties Highway Organization (ECHO) Meeting Report:** The ECHO meeting, which is held twice a year, helps local organizations obtain funding opportunities and also helps coordinate local projects. The city is still pursuing a grant for the walkway project.

**Request for Proposals on Trash Collection:** The city visited two or three local trash collection agencies and felt that going out to bid instead of renewing the current PSI contract due in August could be advantageous to the city.

**Retirement Party for Zane Baler:** The mayor has set Thursday, May 31, as Zane's retirement party. It will be held in the evening. Details will be worked out in the coming days.

## **DEPARTMENT REPORTS:**

### **COUNCILMAN BARRUS:**

**Waterline at Church Fixed:** Councilman Barrus reported that the ruptured waterline at the church on Center Street was fixed after some difficulty putting in the sleeve around old deteriorating metal pipe.

**Water Bond Project:** The city has scheduled May 15 to open bids for the Moody water pipeline installation. The sleeve is already under the canal.

**COUNCILMAN WADDELL:**

**Teton Dam Marathon:** The city still needs volunteers to help with aid stations and four intersections. The marathon will be held Saturday, June 2, 2018. The city will check on American flags being set up for the event by the Scouts. The city will also arrange for law enforcement to be present.

**COUNCILWOMAN BALL:** The Tree and Beautification Committee met last night and finalized preparations for the Arbor Day Celebration tomorrow at 11 a.m. The art winners will be displayed at city hall as in years past. As directed by the mayor, the committee will also take charge of the Sugar Days Celebration assisted by the students who approached the city about being involved in such a celebration for their senior project. Members of the committee questioned if there would be a better day than holding it on the same day as the 24<sup>th</sup> of July celebration in St. Anthony.

**COUNCILMAN KING:** No report.

Meeting adjourned at 8:20 p.m.

Signed: \_\_\_\_\_  
David D. Ogden, Mayor

Attested: \_\_\_\_\_  
Wendy McLaughlin, Clerk-Treasurer

WADDELL RECUSAL STATEMENT, May 10, 2018

Before the council proceeds with this matter I have a statement that I would like to enter upon the record. I would like to recuse myself from participating in this matter in my capacity as a member of the City Council because it has become necessary that I become a witness in the matter. My recusal is solely because of the need to participate as a witness and is not in any way because I have an economic interest in the matter under consideration.

My wife and I currently reside at 275 E. Appaloosa Street, Sugar City, Idaho. Our home is located approximately six blocks east of the eastern boundary of the Old Farm Estates Subdivision, Division #3. Our home is not located on any road which will be significantly impacted by this Subdivision. I also own a parcel of commercial property which is located approximately four blocks away from this Subdivision. Such parcel similarly will not likely be adversely affected by vehicular traffic originating from the Subdivision. Because of the considerable distance of these properties from the Subdivision and lack of significant traffic therefrom bypassing my properties, it would be impossible to quantify any economic effect of this development upon such properties. I do not own any business which competes with the Lerwills.

I was also a member of the Citizens for the Rule of Law association which filed a Petition for Judicial Review with respect to the prior Council's approval of the application for rezoning the subject property. I was not a member of the City Council at the time this action was filed. At the time this action was filed, I believed the rezoning and resulting traffic was detrimental to all residential properties in the City, including my own. However, as noted above, such broad, general impact was not quantifiable in economic terms with respect to my properties. My attorneys in that action made clear in the briefing that my involvement in the matter was solely through my membership in the Citizens group.

Nevertheless, in the interest of fairness, I do wish to recuse myself from participating in tonight's deliberations as a City Council member. I do however reserve the right to participate in future matters involving the Old Farm Estates Subdivision, provided such matters involve the exercise of the City's proprietary, legislative, or other police powers and provided such actions are consistent with the Idaho Ethics in Government Act and other applicable ethics statutes.