

MINUTES OF REGULAR MEETING
SUGAR CITY COUNCIL
THURSDAY, MAY 25, 2017

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; Councilmen Bruce King , Bruce Arnell, Joe Cherrington, and Matt Garner; City Public Works Director Zane Baler; City Building Inspector Cliff Morris; Chairman Brent Barrus, of the Planning and Zoning Commission; Standard Journal Reporter Adam Jacobs; Attorney Dylan Anderson of Forsberg Law Offices representing Bill Forsberg; Attorney Michael W. Brown of Beard, St. Clair, Gaffney representing Jeff and Ryan Lerwill; Idaho Transportation Department District 6 Traffic Engineers Ben Burke and Randal Banelli; Citizens Jesse Brown, Kevin Galbraith, Paul Jeppson, Elaine King, Jeff Lerwill, Ryan and Kalle Lerwill, Barbara Lusk, Kerry Moser, Catherine Nielsen, Scott and Denise Stears, Debra Thompson, Vaun Waddell, Travis Williams, and Britney

Mayor Ogden asked if there were any corrections to the minutes of the regular meeting held on May 11, 2017. Each councilman had a copy of the minutes prior to the meeting. It was moved by Councilman Arnell and seconded by Councilman Cherrington to accept the minutes; motion carried.

PLANNING AND ZONING COMMISSION REPORT: Chairman Brent Barrus reported on items of business:

Impact Area Report: The Planning and Zoning Commission is seeking a meeting with the Madison County Commissioners to discuss increasing the area of impact. Madison County Planning and Zoning Administrator Brent McFadden will set up the meeting.

Land Use Title 9 Revisions Update: The Planning and Zoning finished their proposed revisions to the Land Use Schedule and made them available to the council for review. They are also working on definitions for “cottage homes”, “tiny homes”, etc., as these are items they may consider in the future. Mr. Barrus reminded the council the commission is still looking for help after the resignations of Commissioners Val Bush and Hans Redd over the past few weeks.

OLD FARM ESTATES DIV #3 PUBLIC HEARING FINDINGS OF FACT AND POSSIBLE ADOPTION: Mayor Ogden gave a brief history of the public hearing held Thursday, April 6, 2017. The meeting was well attended with standing room only. All that wanted to testify who attended the meeting were given opportunity with the meeting going well into the evening lasting more than three hours. The Planning and Zoning Commission did not make a decision that night but decided to reconvene at the next regular meeting to discuss it in detail. A recommendation was not made until two meetings later at the May 4th meeting and five more hours of deliberation. The council received the Findings of Fact recommendations from the commission before May 11, 2017 and took an additional two weeks to review. After much discussion the council adopted the Findings of Fact despite a last minute petition for a public

hearing and threat of a law suit if not held. Vaun Waddell representing Citizens for the Rule of Law read a document (Attachment #1) requesting a public hearing from the council citing that the public was not given proper notice, the procedure and handling of the public hearing were incorrect, the applications were not complete or did not meet standards, and an amendment to the development agreement must have a public hearing.

Each Councilman was given time to comment. Each took time to listen to over three hours of testimony and poured over written testimonies to the public hearing held on April 6, 2017. Councilman King encouraged the council to have their own public hearing and make up their own minds.. He reminded the council that they could be sued and that 57 citizens signed a petition for another public hearing. He wants the city to maintain the small-town, family-focused feel and felt the applications “push the envelope”. He also suggested that a larger tax base may not be best for the citizens as additional growth could “eat up” the increased tax base.

Councilman Garner commended the Planning and Zoning (P&Z) Commission for the many hours and thoroughness put into the hearing. He stated it is a difficult decision that affects him personally.

Councilman Cherrington again commended the P&Z for their thoroughness and hard work. He looked at the petition which was signed by 57 people. Of the 57 who signed the petition 15 had already testified. He also listened to public hearing and read all the testimonies and felt that the city had done all that was required. He also addressed the concern of a mindset that allows others to dictate what one can do with his own property and reminded the public that what was before them were the applications and whether they approved or disapproved of them.

Councilman Arnell read a statement that he had prepared. To summarize his remarks he also commended P&Z for their work and effort and felt they deliberated and made their recommendations with the Comprehensive Plan in mind. Councilman Arnell also listened to all the testimonies given and written at the public hearing. He emphasized if the city could not grow how would the current citizens pay for the aging 40-year-old infrastructure or update the current inadequate water system. Sugar Salem School District ranks last of all Idaho districts as the smallest tax base for school support.

MOTION: It was moved by Councilman Garner and seconded by Councilman Cherrington to adopt the Findings, Conclusions, and Recommendations for the zone changes on Old Farm Estates. Thereupon, the clerk called roll upon said motion.

Those voting aye: Councilmen Arnell, Cherrington, and Garner

Those voting nay: Councilman King

Thereupon, the mayor declared the motion passed.

ORDINANCE NO. 326_2017 (Approving Zone Changes and Amending the Zoning Map in Old Farm Estates Division #3):

Ordinance No. 326_2017 was introduced and read in its entirety by Councilman Cherrington entitled:

“AN ORDINANCE APPROVING PROPOSED ZONE CHANGES AND AMENDING THE ZONING MAP OF THE CITY OF SUGAR CITY AS SHOWN ON THE ATTACHED MAP, PROVIDING FOR THE ADOPTION OF THE AMENDED MAP; PROVIDING FOR REPEAL

OF ANY CONFLICTING PROVISIONS OF THE CODE AND PROVIDING FOR EFFECTIVE DATE OF THIS ORDINANCE.”

It was moved by Councilman Cherrington and seconded by Councilman Garner 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: Councilmen Arnell, Garner, and Cherrington
Those voting nay: Councilman King

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 Arnell and seconded by Councilman Garner to adopt this ordinance. Thereupon, the clerk called roll upon the motion.

Those voting aye: Councilman Arnell, Garner, and Cherrington
Those voting nay: Councilman King

Ordinance No. 326_2017 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 326_2017 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.

MOTION: It was moved by Councilman Garner and seconded by Councilman Arnell to adopt the Findings, Conclusions, and Recommendations and approve the Preliminary Plat on Old Farm Estates. Thereupon, the clerk called roll upon said motion.

Those voting aye: Councilmen Arnell, Cherrington, and Garner
Those voting nay: Councilman King

Thereupon, the mayor declared the motion passed.

RESOLUTION TO AMEND THE PROPOSED OLD FARM ESTATES DEVELOPMENT AGREEMENT TO LIMIT DENSITY: The council decided to hold a public hearing on the Development Agreement Amendment even though Assistant City Attorney Dylan Anderson did not think it was necessary. The proposed amendment to the Old Farm Estates Development Agreement will limit the density of cottage homes to 16 on lots 1 of Block 17 and 8 of Block 11.

MOTION: It was moved by Councilman Cherrington and seconded by Councilman Garner to set a public hearing date for Thursday, June 29, 2017; motion carried.

OLD FARM ESTATES DIV #2 FINAL PLAT AND POSSIBLE ADOPTION: The mayor introduced the Old Farm Estates Division #2 Final Plat adoption as an administrative function. The Final Plat was sent to key public officials to review and sign off or make recommendations. Those reviewing the Final Plat were:

- Idaho Transportation Department (ITD)
- Department of Environmental Quality
- Madison County Fire Department

- Sugar-Salem School District No. 322
- Sugar City Building Inspector – Cliff Morris
- Sugar City Public Works Director – Zane Baler
- Sugar City Engineer – Dick Dyer

All key officials gave their approval to the final plat except for Dick Dyer and ITD. Dick Dyer recommended using a smaller sewer line and putting in a lift station for better flow. He also recommended using French drains instead of swells where the water runs into an engineered drain ditch. The plat was changed to reflect the sewer pipe change and lift station. However, the swells remained as more favorable instead of French drains which clog easily and are not the best method to carry storm water in this area.

Ben Burke, District Six Traffic Engineer, attended the meeting to let the council know he was very close to signing off on the plat with a few minor traffic deceleration lanes and distances that needed to be worked out. He did favor the intersections and abandoning or closing North 7th West across the railroad tracks next to Norsun. The city agreed and Mayor Ogden will meet with Norsun to discuss the proposal.

MOTION: It was moved by Councilman Cherrington and seconded by Councilman Arnell to Adopt Division #2 Final Plat subject to the final approval of ITD, City Engineer Dick Dyer, and bonding requirement; the clerk called roll upon said motion.

Those voting aye: Councilmen Arnell, Cherrington, and Garner

Those voting nay: None

Councilman King abstained citing that the final plat opens the way for denser housing.

Thereupon, the mayor declared the motion passed.

RESOLUTION TO APPROVE BOND/CASH AGREEMENT FOR COMPLETION AND WARRANTY ON OLD FARM ESTATES DIVISION #2: Resolution No. 2017-12 was introduced to the council and read in full by Councilman Cherrington. It was moved by Councilman Cherrington and seconded by Councilman Arnell to approve Resolution No. 2017-12. Thereupon, the clerk called roll upon said motion.

Those voting aye: Councilmen Arnell, Garner, Cherrington, and King

Those voting nay: None

Thereupon, the mayor declared the motion passed. A copy of said resolution is attached hereto marked "Attachment 2."

MAYOR'S BUSINESS:

Planning and Zoning Work Meeting: The mayor reminded the council that a working meeting with Planning and Zoning to discuss the Land Use Schedule is set for Thursday, June 15, 2017 at 6:30 p.m. The council was given a copy of the proposed changes to review and prepare comments. The Land Use Schedule controls what goes into the zones. Councilman King will not be here but will send his suggestions.

Town Hall Water Meeting Report: The second Town Hall Water Meeting was attended by 12-15 people. The questions were mostly the same as the first meeting. Citizens have asked that the city be as conservative as possible on spending for the new water system. Both positive

and negative comments have been received. The next scheduled town hall water meeting will be held on the second Wednesday in July (July 12). The final town hall meeting will be the third Wednesday in September (September 20) in time for the bond election in November. The bond must meet a 2/3 majority in order to pass.

Madison County Senior Officials Guide (SOG) Emergency Procedures Manual: Mayor Ogden reported that each councilman has received with their packet the new guide for emergency procedures. Each is encouraged to review it.

PAY IT FORWARD UTILITY BILLS DISCUSSION: No report.

BUDGET SCHEDULE AND PROCEDURES DISCUSSION: City Clerk-Treasurer Wendy McLaughlin reviewed the budget schedule with the council. A budget work meeting was set for Wednesday, June 28, 2017 at 6:30 p.m. where details and budget recommendations will be discussed. The work meeting is open to the public. The clerk will remind the council of the meeting as it draws closer.

DEPARTMENT REPORTS:

COUNCILMAN KING: The large roll-off dumpster by the city shed has been very helpful and useful to city residents.

COUNCILMAN CHERRINGTON:

Teton Dam Marathon: Mr. Cherrington reported that the Teton Dam Marathon is planned for Saturday, June 3, 2017 and 60 volunteers have signed up to help man the water stations from the high school. They will be in charge of four stations.

Annual Pioneer Community Breakfast: Planned for Saturday, July 22, 2017

COUNCILMAN ARNELL:

LEPC Meeting: Councilman Arnell reported on the Local Emergency Planning Committee meeting. Representatives from Pocatello were in attendance. The main topic was the high snow pack in the mountains and which rivers would be impacted the most as far as flooding. The Snake River was not on the danger list but the Teton River was red-flagged as the 5th highest water amount expected to be recorded.

COUNCILMAN GARNER: Councilman Garner reported that the city is planning on seal coating First North, North Park and maybe Pro Peat Drive to keep ahead of the truck traffic.

Meeting adjourned at 9:30 p.m.

Signed: _____
David D. Ogden, Mayor

Attested: _____
Wendy McLaughlin, Clerk-Treasurer

May 25, 2017

Dear Mayor and City Council:

We, Sugar City Citizens for the Rule of Law, ask that this letter be read aloud in today's city council meeting and included in its minutes. The letter is not about effects of Old Farm Estates proposed zone change, but about procedure in its handling.

We object that a public hearing has not been held before city council, and request the scheduling of a public hearing forthwith. The 35-day rule allows this: when the city council holds a public hearing, the 35-day countdown starts from the public hearing. Reasons for requesting (and expecting) a public hearing are that procedure on this application is out of compliance with Idaho Code, that the public was not given proper notice, and that the city has not acted consistently with the comprehensive plan and city code.

Idaho Code 67-6519, Application Granting Process, refers to "...the application before the [planning and zoning] commission makes its decision on the application or makes its recommendation to the governing board." The Sugar City P&Z is not empowered to decide the application, but only to make recommendation to the governing board. For the council to decide the application without hearing the public directly is to separate the decision makers from participation in an evidentiary hearing, which we consider to be out of compliance with Idaho statutes.

Idaho Code 67-6511A, Development Agreements, states that "a commitment may be modified only by the permission of the governing board after complying with the notice and hearing provisions of section 67-6509." We hear of a side contract being prepared between the city and the applicant, concerning development of property along the western edge of the tract. The public has not been noticed concerning this contract. Per the Idaho Code, we believe the contract to be subject to laws on notice and hearing. Further, development for any use in an MU zone requires a special use permit (9-3-6, Land Use Schedule), so a side contract implying permission to develop circumvents the mandated procedure of application, notice, and hearing.

The public have not been given proper notice. Relevant input from the school district was withheld from the application on a technicality. Remarks made in P&Z by commissioners were stricken from the record. The application does not inform its readers what is planned as a result of the proposed rezoning, thus depriving the public of due process. Even city instrumentalities are not sufficiently informed to make a reasoned decision. The application does not state proposed uses (city code 10-3-5-A-4-d), reasons for reclassification (9-5-2-B), amenities to achieve higher standards of development (10-5-2), and a sufficiently detailed site plan (10-5-2-C, 10-5-3-A) to inform readers what is planned, therefore how they can consider the application. Having not had proper opportunity to know what is being considered, the public have not had proper opportunity to present evidence in opposition.

The comprehensive plan and city code make mixed use (MU) distinct from all other zones: MU permits varied uses on a parcel (comprehensive plan chapter 6, Land Use, Land Use Map, second paragraph; city code 10-5-2); has its own schedule of reduced standards for area, frontage, setback, and height (9-3-7-B); and entails compensatory amenities to raise, not lower, development standards (10-5-2). Its application includes a level of detail sufficient to enable informed judgments on particulars of development that would not necessarily attend reclassification to other zoning districts (10-5-2, 10-5-3-A). The public cannot testify on that which they do not know.

If city council approves this application without conforming with Idaho code, the comprehensive plan, and the city code, this citizens group will file a petition for judicial review on grounds outlined above, asserting that without the application being complete the city administration cannot perform due diligence in seeing that the comprehensive plan and city code are upheld and interests of the community expressed in them are protected.

The route of the public hearing is simple – clean, quick, and inexpensive – relative to time and cost in money and publicity that legal action would entail. In the best interest of all concerned, we urge acceptance of this request.

Sincerely yours,

Vaun Waddell

Sugar City Citizens for the Rule of Law
Vaun Waddell, member
275 E. Appaloosa, PO Box 523, Sugar City ID 82448

The City of Sugar City, Idaho

Resolution No.: 2017 - 12

“A Resolution to Approve an Agreement to Provide Bond and/or Cash Escrow for Completion of Infrastructure and Warranty of infrastructure Improvements in the Old Farm Estates Subdivision, Division #2.”

WHEREAS, the Council of the City of Sugar City, Idaho desires to provide infrastructure needs to the Old Farm Estates Subdivision, Division #2, including water, sewer, storm water drainage, street lights and signs, and other necessary infrastructure; and

WHEREAS, Ryan Lerwill and Jeff Lerwill, owners of the Old Farm Estates Subdivision, desire to construct said infrastructure, through the services of an independent contractor, with the intention of turning aforementioned infrastructure over to the City of Sugar City, and;

WHEREAS, Sugar City Code, Section 10-3-9, requires the owners to provide a bond, acceptable to Sugar City, to cover the cost of the infrastructure, along with a bond to cover a two-year warranty on said infrastructure, and alternately security may be provided in the form of cash deposit, cashier’s check, or irrevocable bank letter of credit;

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 Agreement to provide Bond and/or Cash Escrow in the amount of 100% of the cost of the infrastructure, and 25% of the infrastructure cost for the warranty, totaling 125% of the total estimated cost of the infrastructure, and authorizes the Mayor to execute said agreement.

PASSED by the Council of the City of Sugar City on this 25th day of May, 2017

APPROVED by the Mayor of the City of Sugar City on this 25th day of May, 2017.

(SEAL)

David D. Ogden,
Mayor

ATTEST:

Wendy McLaughlin,
City Clerk - Treasurer