

MINUTES OF REGULAR MEETING
SUGAR CITY COUNCIL
THURSDAY, JANUARY 12, 2006

Presiding: Glenn W. Dalling
Meeting Convened at 6:30 p.m.
Prayer: Walter Deitz
Pledge of Allegiance

Present: Mayor Dalling; Sharon L. Bell, Clerk; Marcie A. Smith, Treasurer; Council members Tim Kershaw, Brent Barrus, Walter Deitz and Harold Harris; Scott Lee, City Attorney; Sharee Palmer, Planning & Zoning Commission; Jan Gallup; Jill Moss; Joy Ball; Verla Moss; Brad Orme; Deputy Cameron Stanford; Jan Barrus; Bruce King; Daedre Orme; Greg Preslar; Melanie Davenport; Taylor Davenport; David P. Davenport; Elaine King; Sarah King; Dave Thompson; Don Rydalch; and Garry Jeppesen.

The Mayor asked if there were any corrections to the minutes of the regular meeting held December 8, 2005; the minutes of the special meeting held December 14, 2005; the minutes of the special meeting held December 19, 2005; the minutes of the special meeting held December 23, 2005; the minutes of the special meeting held January 4, 2006; and the minutes of the special meeting held January 11, 2006. Each council member had a copy of said minutes prior to the meeting. It was moved by Council member Deitz and seconded by Council member Harris to accept the minutes of December 8, 2005; motion carried. It was moved by Council member Harris and seconded by Council member Kershaw to accept the minutes of December 14, 2005; motion carried. It was moved by Council member Deitz and seconded by Council member Barrus to accept the minutes of December 19, 2005; motion carried. It was moved by Council member Deitz and seconded by Council member Barrus to accept the minutes of December 23, 2005; motion carried. It was moved by Council member Barrus and seconded by Council member Kershaw to accept the minutes of January 4, 2006; motion carried. It was moved by Council member Deitz and seconded by Council member Harris to accept the minutes of January 11, 2006; motion carried.

Marcie presented the December reconciliation reports for the General Fund. It was moved by Council member Deitz and seconded by Council member Barrus to accept the December reconciliation reports for the General fund; motion carried. Marcie presented the December reconciliation reports for the Utility Fund. It was moved by Council member Kershaw and seconded by Council member Harris to accept the December reconciliation reports for the Utility Fund; motion carried.

Marcie presented the current bills in the amount of \$42,966.77. It was moved by Council member Deitz and seconded by Council member Harris to pay the current bills, together with all regular January bills that have not yet been received; motion carried.

CONTRACTOR'S REGISTRATION ISSUES: Council member Harris reported on the Contractor's Registration law that went into effect January 1, 2006. He presented a statement to

be handed out with each building permit that reads: "Applicant/homeowner hereby acknowledges the Idaho Contractor Registration Act requires contractors to register subject to certain exemptions. Applicant/homeowner represents to the City of Sugar City that it is in compliance with the Contractor Registration Act." This alerts a homeowner that there is a contractor registration, so it becomes their responsibility to check with their contractor. Harold feels this is the simplest way for the City to stay out of a lot of expensive documentation by having this statement signed by whoever comes in for the application. A discussion was had on the three options and their possible consequences that the Association of Idaho Cities offered. The AIC said it is important to understand that the primary enforcement responsibility is not assigned to local government. The accountability for that rests primarily with the Bureau of Occupational Licenses and the Idaho Contractor's Board. Attorney Lee said, unless the contractor provides their registration number, that we go ahead and put the statement "No contractor registration provided" on the front of the building permit itself. This alerts the homeowner that if they have a problem with it, they can go ask the contractor for his registration number.

MOTION: It was moved by Council member Harris and seconded by Council member Kershaw to adopt the Idaho Contractor's Registration Act statement that goes with the application for a building permit; and if the building permit is approved, the stamp recommended by Attorney Lee "No contractor registration provided" is stamped on the building permit in place of the number; motion carried.

PLANNING & ZONING COMMISSION APPOINTMENTS: The Mayor reported he talked with KaraLee Ricks who said she would be willing to fill Brad Orme's unfinished term for two years. This was done in a response to a motion in the minutes dated December 8, 2005. The Council also suggested he take the list that was presented by P&Z and contact those people to see if they would serve to replace KaraLee Ricks and Bruce King, both of which are three year terms.

MOTION: It was moved by Council member Barrus and seconded by Council member Harris to appoint Stephanie Blackham and Bruce Bills to serve three-year terms on the Planning & Zoning Commission; motion carried.

RETIRING COUNCIL MEMBERS: The Mayor expressed appreciation to Council member Tim Kershaw and Council member Brent Barrus for eight years of dedicated service as City Councilmen. Council member Harris presented a plaque to Council member Kershaw and Council member Deitz presented a plaque to Council member Barrus. Both retiring Council members expressed gratefulness for the opportunity to serve. The Mayor called for a break to give everyone an opportunity to congratulate them and to enjoy light refreshments.

ADMINISTRATION OF OATH OF OFFICE TO NEWLY ELECTED OFFICIALS: After concluding the fiscal matters of the preceding year, City Clerk Sharon L. Bell performed the swearing in of the newly elected officials as follows: Council members Bruce P. King and Brad Orme for terms of four years. The new Council members signed the Oaths of Office, were presented with Certificates of Election and then took their places at the Council table. The Mayor officially welcomed them to the Council and reported he looked forward to serving with them. He said their term would be one of the most difficult and one of the most exciting four years in the history of 103 years of this City as there are so many changes taking place.

ELECTION OF PRESIDENT AND VICE-PRESIDENT OF COUNCIL: The Mayor entertained a motion to appoint a President and Vice-president of the Council. **MOTION:** It

was moved by Council member Deitz and seconded by Council member King to appoint Harold Harris as President of the Council; motion carried. **MOTION:** It was moved by Council member Harris and seconded by Council member Orme that we appoint Bruce King as Vice-president of the Council; motion carried.

CITIZEN INPUT: There was no citizen input.

JAN GALLUP:

Title 8 (Design Review): Jan reported our ordinance states that City Council has 15 days to act on P&Z's recommendation in regards to an ordinance change from the date that they had a public hearing, which was January 4th. The Council agreed they are not ready to make a decision on Title 8 to meet the deadline. Jan explained with this particular title they have had a group of six that prepared it and approved it; they have had a group of eight that has approved it; now it is in City Council's hands. Attorney Lee suggested at this point we can table it, and he will do some research to see if there is a way we can get around having another public hearing. The Council would like more opportunity to continue to study design review. Jan said if we make any material changes to the ordinance we will have to have another public hearing. She would welcome input from the Council members. She will make sure the Council has the newest copy of the changes. Title 13, the chapter that addresses annexation, was discussed. P&Z's recommendation is that they have a public hearing and City Council chooses whether or not to have a public hearing. **MOTION:** It was moved by Council member Deitz and seconded by Council member Harris to table the decision on Title 8 (Design Review) until our January 26th meeting; motion carried.

Planned Unit Developments: Jan presented a report regarding the Planned Unit Development approval process. She made a proposal to Planning & Zoning that they would discuss at their meeting next week of the process for a planned unit development application.

Comprehensive Plan Maps: Jan handed out maps that were presented at the town meeting. She asked for feedback from the Council. She said the annexations that we are considering for approval will necessitate a change in the Comprehensive Plan Map. It is a requirement so that the comprehensive plan map matches the changes in our land use. Jan added a new category on the comprehensive plan map: transitional development. It could blend into manufacturing and residential; it could blend into commercial and residential. Discussion was had.

Impact Area Expansion: Jan mentioned the fact that the County Commissioners are not going to expand impact areas at this time.

Transportation Map: This map shows that 7th West would eventually be closed off where it intersects Highway 33. Jan reported she called the Madison County Road Director and the State Highway Department for Highway 33. They both said they would leave what is done with that intersection up to Sugar City, but both of them agreed that it is a dangerous intersection. A discussion was had on said transportation map. Seventh West is to be left open at present. The map can be changed every six months; so when it becomes necessary and there are some good options, then we can go through the process and change it. Jan said this is just to get input that she can take back to P&Z so they can make some changes on the map before their public hearing.

Ball, Brown, Harris & Jeppesen Annexation: Jan reminded the Council they have 15 days to approve P&Z's recommendation on the annexation, which is January 26th. Any appeals to the Court have to be submitted by the 27th of January. The property owners filed a Petition for

Judicial Review of Adoption of Annexation Ordinance with the Court today against the City of Rexburg. Sharon has a copy of it, which has been stamped by the Court.

PLANNING & ZONING REPORT: Sharee Palmer addressed the Council.

Jean Dalling Property: Sharee said the Jean Dalling property would be developing sometime in the future. They have requested and received a road easement from the State off their turnaround. The State called P&Z and they discussed it. They wanted to know before they gave that easement exactly what we were going to require. P&Z requested a 55 foot road curb-to-curb with an 80 foot easement.

Home Business License: P&Z had an application for a business license at their meeting. They discussed it and decided it was a home occupation and did not need a business license. Attorney Lee advised them that maybe we need to have an application for even a home occupation to fill out just so the City is aware of where these businesses are, so that as they grow and develop into possibly something more and it becomes a home business, then the City is aware of that. A discussion was had on a home business versus a home occupation. Sharee said a home business is defined as follows: "When a dwelling is changed or modified or an additional building is erected on the lot, a home occupation becomes a home business. This new building must conform to existing ordinances." A home occupation is defined as follows: "Any gainful occupation engaged in by an occupant of a dwelling unit or the accessory building for gainful employment which is clearly incidental and subordinate to the use of the dwelling unit as a residence which meets all of the following conditions: (a) the use is clearly incidental and secondary to the use of the dwelling for dwelling purposes; (b) the use is conducted entirely within a dwelling and is carried on by the inhabitants thereof; (c) no goods, wares or merchandise shall be sold or offered for sale on the premises except such as is produced by the occupants on the premises and also except small articles and notions pertinent to the business; (d) the use does not change the character of the dwelling or adversely affects the uses permitted in the residential district; (e) the use requires no additional off-street parking space; and (f) one part-time worker may be employed for not more than 30 hours per week. Not more than one-fourth of the gross area of the said dwelling is used for such use." Once they get out of those conditions, then they revert to a home business. P&Z was asked to propose how to track this issue.

New P&Z Commissioners Terms: Stephanie Blackham and Bruce Bills are for three years, and KaraLee Ricks is for two years. The Mayor said they have all accepted.

P&Z Meetings: Sharee reported P&Z is having two meetings every month, the first and the third Thursdays at 7:30 p.m. They elected Sharee Palmer to continue as Planning & Zoning Chairman. She said with all that is going on she will agree to go another year, and that is the end of her term. They have not put in a secretary yet.

Complaint: Sharee got a complaint of someone not in compliance with City ordinances on their property. The property is in the City so she told them that they need to complain to the City. The complaint is that there are trailers on the property that are being lived in that shouldn't have been. She told them to call and deal with the City Council on it.

GRANTS: Don Rydalch addressed the Council.

Rock sign at south entrance: Mr. Rydalch brought the Council up to date on the southwest entry project. He just finished the bid specification packet that he and Rayo Budge will deliver tomorrow. They are bidding for a professional landscape consultant, sprinkler parts, trees, the slab rock, and electrical work by requirement of the State. The work is projected to be done between April 1st and May 31st on the site. There will be paperwork that will follow thereafter. A

discussion was had on the water lines that are in the area and overhead power lines, and they need to be considered before the sign is installed. We need to verify where the line is and make the determination on how we want to deal with it before it goes out to bid.

CHC Grants: Mr. Rydalch reported the CHC Foundation has grants. We applied for one last year for the street sweeper and we were denied. They have grants twice a year and the next application deadline is February 28th. He feels it is worth applying for if we have smaller-cost-type items and asked the Council for their input. The Mayor expressed appreciation to Mr. Rydalch for his help.

MAYOR'S BUSINESS: The Mayor suggested we extend City Hall's hours on a permanent basis. We can do this by resolution. He also suggested that the City Council hold two regular meetings each month.

MOTION ON OFFICE HOURS: It was moved by Council member King and seconded by Council member Orme that we set the office hours for City Hall from 9 a.m. to 4 p.m., making them permanent; motion carried.

MOTION FOR TWO MONTHLY CITY COUNCIL MEETINGS: It was moved by Council member Harris and seconded by Council member Orme that we include an additional meeting per month for a total of two regular meetings a month on a regular basis on the second and fourth Thursday of every month at 6:30 p.m.; motion carried. The Mayor said we should try to eliminate extra meetings unless it is an emergency.

Assignments for Individual Council Members: The Mayor said assignments for Council members would be given next week. He asked the Council to think about each of them having an advisory committee. The more people we can be involved with on a regular basis, the more support we will have.

BALL, BROWN, HARRIS & JEPPESEN ANNEXATION: The Mayor asked for brief comments from Jan Gallup and Attorney Lee on the annexation.

Jan Gallup: Jan said in meeting with the property owners this morning, all four of them signed the appeal. It was filed by Todd Harris and his mother this morning. The property owners would really appreciate support from the City. Not only have they agreed to work together as property owners, they have agreed to work with the City and they have even paid for that opportunity to work with the City. After reviewing your billings to date, you have seen how much they have paid in publication fees. They want to convey that they really do want to be annexed into Sugar City and would like your support and would like you to file an appeal with the District Court. We have an annexation ordinance to prepare. The property owners have not hired an attorney but are planning to. Todd Harris mentioned today after he had filed the appeal that now they needed to find an attorney. They are looking at attorneys in Boise and Pocatello.

Attorney Scott Lee: He feels it is something the City can do. He thinks Rexburg didn't follow their procedure. He isn't convinced that the constitutional arguments will be the argument that carries the bait, but he feels the procedural missteps that Rexburg did are sufficient.

The Mayor turned the time over to the Council for their comments:

Council member King: Bruce believes for two reasons that Sugar City should contest this matter just as the property owners apparently will. (1) He thinks this area is important to the future of Sugar City, and there are strong reasons why we should entertain the applications of these property owners. (2) He feels there is strength in numbers and if we also contest it, he feels that will be a strong message to the legal people. He feels Rexburg did make a number of missteps and for the good of our community in general, it would be good to stand up and proceed

with annexing this property. He feels personally like annexing it tonight would be in order. He feels since they have contested it, then it is an open issue and he thinks it would be wise to annex it tonight.

Council member Deitz: Walter asked a couple of legal questions: Have we done anything that would violate this annexation for us? Have we followed everything to the letter of the law? Attorney Lee said to his knowledge we have been very careful to make sure we have done that. Walter asked if the judge could throw out our annexation and tell the cities to work this out? Attorney Lee said procedurally these are the steps he could see take place. An appeal has been filed to throw out Rexburg's annexation and we annex. It could ultimately go to the Supreme Court who would look at it, issue its ruling and if the Court upheld Judge Moss's ruling, then it would be whether or not we followed our procedure. Judge Moss will look at whether we followed our procedure or not. Attorney Lee said under the statute that the only requirement for a voluntary annexation is that they have to be contiguous. For the other two types of annexation they have to be within the impact area. He said we are working under a brand new statute that has drastic changes from what it was before. Voluntary annexation is treated very differently from the others. The reason for that is the others have a forced annexation aspect to them when you are annexing people who don't want to be annexed. We talked about precedence but no precedence has been set. There are no cases dealing with this type of issue under the new statute. He guesses Rexburg will go all the way to the Supreme Court. A discussion was had on the costs of taking it to the District Court and possibly to the Supreme Court.

Council member Harris: Harold is in favor of proceeding with this. He said the sewer is of prime importance to this community. If we continue to battle, the first thing we need to do is get the sewer issue clarified. It is a serious situation. He reported the 1st of November we could have bought all the capacity we wanted to buy, but as soon as this surfaced there was no more sewer capacity.

Council member Orme: Brad believes the sewer issue is something that if we file this appeal, that when the judge makes his ruling it will be clear one-way or the other. Obviously, Rexburg will probably want to negotiate. At that point we can negotiate the sewer and everything and get it all done. He feels there is a strong possibility that we could get it all done now with this appeal. He doesn't feel any reason to wait on the annexation.

The Mayor asked Attorney Lee if he was sure this was within our legal rights to annex this property. Attorney Lee said our annexation does not become final until the ordinance is published. That is the last step to make it actually take place. So we could pass the ordinance and then not do anything with it for 30 days because we have that many days before we have to actually publish it. We have that much of a window to work with also. Attorney Lee said in this case what he sees happening is it goes to the judge; ultimately the judge is going to decide whose annexation stands. The Mayor entertained a motion.

MOTION FOR ANNEXATION: It was moved by Council member King and seconded by Council member Orme that, in light of the challenge by the property owners to Rexburg's annexation, we annex the four properties (Sandra Ball, Mountain Gold, Harris Family Trust, and Moody Creek, LLC) on the grounds that (a) it meets the legislative intent, general authority of cities and category A annexation classification requirements of Title 50-222 (1-3a), Idaho Code; (b) it furthers economic development objectives of Sugar City as stated on page 20 of the City's comprehensive plan, specifically, Objective 3 ("Encourage, designate, and support new areas for economic development. . ."), Objective 2 ("Locate commercial and manufacturing with consideration for protecting low-density residential areas"), and Objective 5 ("Encourage an

economic base complementary to Sugar City's identify"); (c) whereas all of the property is in the Sugar City School District, it advances the City's commitment "to excellence in education," which is one of its values stated on page 8 of the comprehensive plan, specifically through promoting "orderly growth by encouraging quality... educational opportunities for residents of Sugar City," which is goal 2 on page 14 of the plan, and through promoting "quality education opportunities for school-age residents," which is goal 1 on page 17 of the plan; and (d) it protects property rights, a fundamental part of which is being able to "control" one's own property, as stated on page 10 of the comprehensive plan. For (a), (b), (c) and (d) reasons, I move to annex this property. The Mayor called for a roll call vote.

Those voting aye: Council members Harris, King and Orme

Those voting nay: Council member Deitz

Thereupon, the Mayor declared the motion passed, with one objection.

MOTION TO APPROVE ANNEXATION AGREEMENT: It was moved by Council member Orme and seconded by Council member King that we approve the annexation agreement for Mountain Gold, Harris Family Trust, Sandra Ball, and Moody Creek, LLC. The Mayor called for a roll call vote.

Those voting aye: Council members Harris, Deitz, King and Orme

Those voting nay: None

Thereupon, the Mayor declared the motion passed.

MOTION ON ZONING: It was moved by Council member King and seconded by Council member Orme that we accept the zoning set forth on Map 1 of the annexation agreement for Mountain Gold, Harris Family Trust, Sandra Ball, and Moody Creek, LLC. The Mayor called for a roll call vote.

Those voting aye: Council members Harris, Deitz, King and Orme

Those voting nay: None

Thereupon, the Mayor declared the motion passed.

MOTION TO FILE APPEAL: It was moved by Council member Orme and seconded by Council member King to authorize the City Attorney to file an appeal on Rexburg's annexation Ordinance #948. The Mayor called for a roll call vote.

Those voting aye: Council members Harris, Deitz, King and Orme

Those voting nay: None

Thereupon, the Mayor declared the motion passed.

Meeting adjourned at 10:15 p.m.

Signed: Glenn W. Dalling
Glenn W. Dalling, Mayor

Attested: Sharon L. Bell
Sharon L. Bell, Clerk