

MINUTES OF REGULAR MEETING
SUGAR CITY COUNCIL
THURSDAY, DECEMBER 13, 2007

Presiding: Mayor 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; Councilmembers Harold Harris, Walter Deitz, Bruce King and Brad Orme; Josh Garner, City Attorney; Stephanie Blackham, Planning & Zoning; Don Rydalch; Vaun Waddell; Lamont Merrill; Sharee Palmer; Jan Gallup; and Paul Lusk.

The Mayor asked if there were any corrections to the minutes of the regular meeting held November 8, 2007, to the minutes of the regular meeting held November 29, 2007, and to the minutes of the informational meeting held December 12, 2007. Each councilmember had a copy of said minutes prior to the meeting. It was moved by Councilmember Deitz and seconded by Councilmember Orme to accept the minutes of November 8, 2007; motion carried. It was moved by Councilmember Deitz and seconded by Councilmember Harris to accept the minutes of November 29, 2007; motion carried. It was moved by Councilmember Harris and seconded by Councilmember Orme to accept the minutes of December 12, 2007; motion carried.

Marcie presented the November reconciliation reports for the General Fund. It was moved by Councilmember Deitz and seconded by Councilmember King to accept the November reconciliation reports for the General fund; motion carried. Marcie presented the November reconciliation reports for the Utility Fund. It was moved by Councilmember Deitz and seconded by Councilmember Orme to accept the November reconciliation reports for the Utility Fund; motion carried.

Marcie presented the current bills in the amount of \$65,344.47. It was moved by Councilmember Deitz and seconded by Councilmember King to pay the current bills, together with all regular December bills that have not yet been received; motion carried.

PLANNING & ZONING REPORT: Stephanie Blackham addressed the council.

Title 10, Subdivision: Stephanie reported at the next P&Z meeting they would finish title 10, Subdivision, and take it to public hearing during the first week in February.

Title 9, Chapter 2, Definitions: Stephanie presented the following from P&Z: "We are recommending for your approval Title 9, Chapter 2, Definitions."

Impact Area: Stephanie reported P&Z has scheduled a public hearing on January 3, 2008, at 7 p.m. on a proposed impact area map.

Business Park: The mayor asked Stephanie to report on the meeting in Rexburg yesterday with Ted Hendricks and County Commissioner Bob Hansen. Stephanie reported a need

for a zone change for the business park. The mayor said Ted Hendricks of The Development Company will apply for it, and they want to have the zone change completed by March 1, if possible. The next meeting on the business park is scheduled for January 2 at 5:30 p.m.

Business Park Grant: The mayor reported the governor just announced the approval of a \$500,000 grant for the proposed business park in Sugar City, and if we don't move fast, development and administrative costs will rise.

DISCUSSION ON TITLE 8, CHAPTER 4, DESIGN REVIEW: Councilmembers Deitz, Orme and Harris felt that the proposed design review ordinance was satisfactory as recommended by P&Z and as refined by the council, but Councilmember King felt that input from citizens at the council's public hearing on the proposed ordinance was helpful and should be discussed. He conceded he was alone in this view and, although a supporter of the design review ordinance, he felt to respectfully oppose approval of the ordinance at this time if the council chose not to discuss this input. **MOTION:** It was moved by Councilmember Orme and seconded by Councilmember Deitz that we approve Title 8, Chapter 4, Design Review, as presented at the public hearing on November 29, 2007. The mayor called for a roll call vote:

Those voting aye: Councilmembers Harris, Deitz and Orme

Those voting nay: Councilmember King

Thereupon the mayor declared the motion passed.

TITLE 9, CHAPTER 2, DEFINITIONS: Councilmember King recommended several minor changes. After discussion, it was the consensus of the council to pass the ordinance as recommended tonight by P&Z and as amended by Councilmember King. Attorney Garner reported there was no public comment at P&Z's public hearing on December 6, 2007.

MOTION: It was moved by Councilmember Harris and seconded by Councilmember Deitz that we adopt title 9, chapter 2, as written and as corrected with new insertions from Councilmember King and that we forego a public hearing. The mayor called for a roll call vote:

Those voting aye: Councilmembers Harris, Deitz, King and Orme

Those voting nay: None

Thereupon the mayor declared the motion passed.

TITLE 9, CHAPTER 6, ZONING DISTRICTS: Attorney Garner reported that P&Z has made some material changes to this chapter since their public hearing, so they need to have another public hearing. In the interest of agenda timing, the mayor stopped discussion at this time. It will be continued later in the meeting.

ATTORNEY JOSH GARNER REPORT:

Recommendation on Title 7, Water and Sewer: Attorney Garner reported he likes how Dick Dyer has written it out. He said this does not need to go to public hearing. The water part needs to be developed like the sewer section. He recommends taking out the equivalent users schedule, since it is not being used. He suggests creating a section on chapter 4 that addresses the utility easements about which Councilmember Deitz was worried. Attorney Garner will continue working on title 7.

Adoption of Revised Ordinance #259 (Annexation of Ball and Jeppesen properties):

Attorney Garner reported there are continuing problems in getting the correct property description. Dick Dyer delivered the description to Attorney Garner this afternoon but cautioned him to have the county Geographic Information System (GIS) Department check it out. Craig

Rindlisbacher of GIS couldn't be reached.

DON RYDALCH – REPORT ON WEST ENTRY GRANT: Mr. Rydalch presented a “Report on West Entrance Landscaping Project,” a copy of which is attached hereto marked “Attachment 1.” He announced that the city was awarded the \$21,000 grant for which it applied to complete the project.

DEPARTMENT REPORTS:

COUNCILMEMBER HARRIS: No report.

COUNCILMEMBER DEITZ: No report.

COUNCILMEMBER ORME: No report.

COUNCILMEMBER KING:

Title 1: Bruce presented the mayor, council and staff with a redlined copy of title 1, chapter 8. He asked Sharon and Marcie to review it carefully and to provide their recommendations at the next council meeting.

Web site (“Agreements”): Bruce recommended that we add a page to our Web site called “Agreements” and that we include our annexation and wastewater agreement with Rexburg as the first attachment to this page. The council supported the recommendation.

MOTION: It was moved by Councilmember King and seconded by Councilmember Harris that we add a page to our Web site entitled “Agreements,” that we place this heading on the menu bar of the Web site between the “Resolutions” and “Statements” headings, and that we include on the new page a copy of the North Interchange Development Agreement (annexation and wastewater agreement) between Rexburg and Sugar City; motion carried.

MAYOR’S BUSINESS:

Bike Path: The mayor reported that the Idaho Transportation Department (ITD) is waiting for Keller & Associates to make changes on the design package that will help reduce project costs to fit available funds. ITD cannot put the revised project out to bid until Keller makes the changes and submits them to District 6 in Rigby.

City Council meeting December 27: **MOTION:** It was moved by Councilmember Harris and seconded by Councilmember Orme to cancel our December 27 City Council meeting because of the holiday season; motion carried.

P&Z Appointments: The mayor reported that P&Z would like Brian Hawkes to continue as a member of the commission. KaraLee Ricks has requested not to be reappointed. The mayor entertained a motion to go into executive session.

EXECUTIVE SESSION:

9:00 P.M. It was moved by Councilmember King and seconded by Councilmember Orme, pursuant to Idaho Code 67-2345(1)(a) and (b), that we move into executive session to discuss appointments and personnel issues. The mayor called for a roll call vote:

Those voting aye: Councilmembers Harris, Deitz, King and Orme

Those voting nay: None

Thereupon the mayor declared the motion passed.

Discussions during executive session were on appointments to the P&Z Commission and on personnel issues.

9:25 p.m. The executive session ended and the regular council meeting reconvened. Councilmember Deitz was excused.

TITLE 9, CHAPTER 6, ZONING DISTRICTS (continued discussion): Councilmember King recommended a number of changes to this chapter. He expressed opposition to making allowance for a sexually oriented/adult business in any zone of the city. He presented his reasons in a letter to the mayor and council dated December 13, 2007, a copy of which is attached hereto marked "Attachment 2." Attorney Garner said we should have an area zoned for such activities so we can control where they are at. Also, if we don't have an area at all, we possibly set ourselves up for a lawsuit. It was the consensus of the council to take Councilmember King's suggestion to leave the sexually oriented/adult business entry in the land-use schedule but not to designate any zone as eligible for such a business.

MOTION FOR PUBLIC HEARING: It was moved by Councilmember King and seconded by Councilmember Orme that we accept the changes to title 9, chapter 6, recommended by the council and that we set a public hearing on the chapter for Thursday, January 10, 2008, at 6:30 p.m.; motion carried.

Meeting adjourned at 10:20 p.m.

Signed: _____
Glenn W. Dalling, Mayor

Attested: _____
Sharon L. Bell, Clerk

CITY COUNCIL MEETING

13 DEC. 2007

REPORT ON WEST ENTRANCE LANDSCAPING PROJECT

Sugar City has been awarded a Community Transportation Enhancement (CTE) Grant in the amount of \$ 21,915.00. The project period of time for this grant began on 1 December 2007 and ends 31 December 2008. The scope of the project is to basically to plant 70 trees and install a sprinkler system for the trees, crested wheat grass already growing, and the turf area across the bottom.

TOTAL PROJECT COST AS SPECIFIED IN GRANT AWARD

\$ 21,915.00	Grant Award
4, 192.00	Match time for city employees and use of city equipment
4, 100.00	Minimum City cash match (\$2500 for turf and wheat grass sprinkler parts, and \$1600 for supervision of sprinkler installation) \$6,000 maximum
6, 440.00	Volunteer work from Tree Committee members and citizens
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\$ 36, 647.00	Total cost of project

NOTE : The Mayor and City Council determined to delete the entry sign from the application because of excessive hardscape costs----payable by the City

NEXT STEPS

1. Prepare and distribute bids on all relevant components of the project by Jan. 15 with a due date back of Feb. 15. (Tree Committee will do then award the contracts)
2. Site preparation.....April 1—15
 Straighten out the ditch behind Oliphant's (City officials)
 Fill in the ditch on the north side of property (City officials)
 Prepare turf area for seeding (City.....optional)
3. Install sprinkler system..... April 16—May 10 (Tree Comm, City employees, volunteers)
4. Plant Trees..... May 15----June 15 (Tree Comm., City employees, volunteers)

I Oppose Making Allowance for a “Sexually Oriented/Adult Business” in Sugar City

Mayor and Council:

I oppose making allowance for a sexually oriented/adult business in Sugar City.

Under Idaho statutes (title 52, chapter 1), such an establishment is a moral nuisance, and under the Sugar City Comprehensive Plan (pages 3, 8 and 10), such a business is an incompatible land use.

Moreover, under the U.S. Constitution (Tenth Amendment), decisions about the moral environment of a community rest with the states or local governments.

As for supposed First Amendment protections around “adult” businesses, I join with the late Chief Justice William Rehnquist, current Associate Justice Antonin Scalia and former Federal Appeals Court Judge and Solicitor General Robert Bork – as well as other legal scholars – who hold there is no constitutional justification for unlimited free “speech.”

I express disappointment in the U.S. Supreme Court, whose permissive rulings on pornography and profanity have cleared the way for ongoing moral decline in this country.

I believe we should support measures that strengthen society morally and make our communities more wholesome places in which to live and rear families.

Since by constitutional edict (Tenth Amendment) the category of morality is the responsibility of the states or the people, “The Supreme Court has always recognized the authority of the state to legislate in the interest of protecting community morals” (see U.S. Court of Appeals for the Seventh Circuit, No. 95-2367).

After all, “a fundamental right of Americans [is] to have a say in setting the conditions under which they live,” according to Mary Ann Glendon, Learned Hand Professor of Law at Harvard Law School (“Judicial Tourism,” *The Wall Street Journal*, Sept. 16, 2005, p. A14).

I think we must use care not to let inappropriate things go unchallenged, since people may conclude that we condone them, or worse that such things are permissible.

In summary, I believe that making allowance for a sexually oriented/adult business in Sugar City is a violation of our comprehensive plan and of our state statutes, and that any federal “requirement” to allow such an establishment is a violation of the U.S. Constitution. Given that I have sworn to uphold each of these codes, I feel obligated to raise my concerns.

In light of the high court’s new composition, a contested challenge may just prevail, should such a challenge be levied. In any case, I wish to go on record as opposing permissive rulings, which have, in Judge Bork’s words, “. . .severely handicap[ped] the community’s efforts to retain a morally and aesthetically satisfying environment” (Robert Bork, “The Sanctity of Smut,” *Wall Street Journal*, April 23, 2002, p. A22).

Respectfully,



Bruce P. King
Sugar City Councilman