

**MINUTES OF THE REGULAR MEETING OF THE
HAILEY CITY COUNCIL
HELD MONDAY, JANUARY 14, 2008
IN THE HAILEY TOWN CENTER MEETING ROOM**

The regular meeting of the Hailey City Council was called to order at 5:35 p.m. by Mayor Susan McBryant. Present were Council members Rick Davis, Don Keirn, Carol Brown and Martha Burke. Staff present included City Attorney Ned Williamson and Clerk Heather Dawson.

OPEN SESSION

Mayor McBryant opened the meeting for public comment. Peter Lobb, citizen residing at 403 E. Carbonate asked to speak on the sewer extension to the Croy Canyon Foundation when it is being discussed during this meeting.

CONSENT AGENDA

- CA 418 Motion to approve minutes of December 20, 2007
- CA 419 Motion to approve claims for expenses incurred during the previous month
- CA 420 Motion to approve treasurer's cash report for December, 2007

Martha Burke pulled CA 418 from the consent agenda in order to recuse herself, as she was not present for the meeting. **Davis moved to approve the consent agenda with Burke abstaining from CA418. Keirn seconded; the motion carried unanimously.**

MAYOR MCBRYANTS REMARKS

Mayor McBryant acknowledged the following people:

The South Valley Merchant Association - their enthusiasm has made a clear difference in the vitality of the downtown core.

The Wicked Spud for helping increase business downtown.

The Company of Fools and Hailey Arts Alliance –

Taylor Walker – for the Merriwether Building

Rocky Mountain Hardware for building a L.E.E.D Certified Building

April McLeod – Stable force on the Library Board

Becky Keefer – Planning & Zoning and Parks advocate working hard for the community.

Bill Simons – For the generous gift of the 77 acre park

HELP - Hailey's Environmental Leadership Program – for all the employees and volunteers who have created this program.

Entire P&Z Commission – they draw the picture of this town

Kathy Grotto – for all of her hard work and professionalism

Ned Williamson – for all of his legal advice and guidance

Robin Crotty – for getting the mayor in an out the right door at the right time.

Heather Dawson – who's understanding and institutional knowledge of the city is invaluable.

City Council for five years and deliberating from dogs to dope and Manager to Mayor

Mayor Rick Baird – Mayor of Carey from whom McBryant learned much

Mayor's Keith Roark, Steve Kearns, who exemplified that a leader must be clear in vision and resolute in business. She thanked many others not mentioned, that have helped her in her role as Mayor and she appreciated their support.

Last but not least Mayor Susan McBryant thanked her husband David McBryant for his support.

Mayor McBryant adjourned the meeting at 5:42pm.

OATH OF OFFICE to Mayor-Elect Rick Davis

5:45 Mayor McBryant swore in Mayor Elect Rick Davis.

OATH OF OFFICE TO COUNCIL MEMBERS Fritz Haemmerle & Carol Brown

Mayor Rick Davis swore in Council Members Carol Brown Fritz Haemmerle.

ELECTION OF COUNCIL PRESIDENT

Mayor Davis nominated Martha Burke as President of City Council. **Davis moved to elect Martha Burke as City Council President, Keirn seconded; the motion carried unanimously.**

APPOINTMENTS

City Attorney, City Clerk/Treasurer, P&Z Commissioner, Hailey Historic Preservation Commissioners

Davis nominated Mark Spears to the P&Z Commission. Davis feels Spears can bring financial means to our commission. Brown would have liked to see the application in advance but went ahead and **moved to appoint Mark Spears to P&Z Commission. Burke seconded; the motion carried unanimously.**

Davis decided to hold off on the appointment to the Hailey Historic Preservation Commission until the next meeting. He will submit the applications to the council in their packets.

Davis indicated he would like to appoint Ned Williamson as the City Attorney and Heather Dawson as the City Clerk/Treasurer. **Burke moved to confirm those appointments. Brown seconded; motion carried unanimously**

CONSENT AGENDA

CA 421 Motion to approve surplus property for sale, donation, or disposal, including six vehicles obsolete office supplies, and temporary records older than five years.

CA 422 Motion to authorize Hailey Fire department to expend training funds above budgeted amounts to best utilize a mutual aid reimbursement received from the Castlerock Fire during the current fiscal year for expenses made in the previous fiscal year.

CA 423 Motion to approve findings of fact and conclusions of law for lot line adjustment to Mix's Pine Street, Block 105 replat.

Burke pulled CA 423 to abstain. **Davis moved to approve consent agenda as written with Burke abstaining from CA 423. Brown seconded; motion carried unanimously.**

PUBLIC HEARINGS

Replat of Birdwood, Lot 15, Block 1, located at 911 Silver Star Drive, Birdwood Subdivision. The plat would create 2 lots. The property is within the Limited Residential (LR-1) Zoning District and also is located in the Flood Hazard Overlay. Hailey Planning and Zoning Commission have recommended denial of this application.

Mayor Davis and Carol Brown recused themselves.

Burke chaired this portion of the meeting. Diane Shay, City Planner presented background on this application. Ned Williamson, City Attorney talked about P&Z's decision and the fact that it was based on 3 standards. 1 – There will be no danger to life and property due to increased flood heights or velocities or any materials may be swept on to other lands or downstream to the injury of others. 2 – The proposed use is harmonious and in accordance with the general objectives or any specific objective of the comprehensive Plan. 3 – Safe access to the property shall be available in times of flood for ordinary and emergency vehicles. Williamson explained that this application was originally filed in 2003. P&Z heard and denied the preliminary plat and flood plain. Council considered appeal and upheld P&Z's decision. Williamson explained that it is Council's job to determine if the applicant can satisfy the standards he outlined above. Williamson pointed out drawings with elevations. Fritz Haemmerle, Councilman, asked if the decision was based solely on these 3 criteria. (a,g,h on pg 96, 97 & 99 of the packet) Williamson concurred. In the Flood Plain Development criteria, emergency services would be denied during flood events. Per Fire Chief Mike Chapman the Commission could not prove that there would not be a potential threat to loss of life, limb or property.

Gary Slette, Attorney for John Bulotti spoke. Slette showed a picture of the replat in the Birdwood Subdivision. The lot would be split on the North side. Slette explained that since their last meeting with P&Z they have provided us with a Hydrology Study and determination by FEMA. Slette said that Williamson is correct. The thing that is problematic is the access issue. Chuck Brockway, Brockway Engineering is going to explain a box culvert which in simple terms is a low profile shoe box with the ends removed. This has structurally reinforced fire rating loads that the Fire Chief is requiring. This would allow emergency vehicles to cross over and gain access to the new lot. They have read Chief Chapman's letter and Diane Shay's recommendation and feel they can comply.

Chuck Brockway, of Brockway Engineering presented the flood issues and what they are and how we deal with them. He explained that the West 2/3rds of the property are shown inside the 100 year flood plain. Brockway said that we saw high ground water inundating some of the low areas. One of those areas is the swale that we are dealing with. We had standing water but not water conveying the flood. A Hydroogy Study was requested. Galena did a detail study of property and advised that there is an area above the base line elevation. Brockway Engineering has asked FEMA for a letter taking that portion of the property off of the flood plain map. Brockway then talked about the access road. Brockway said that if FEMA is correct there would be standing water in the swall. What they would like to do is put in the box culverts. They would install one above base flood elevation. An alternative approach would be to put a road at BFE. This would be replacing the natural swale and would address the access issues. There will be no water standing on the road.

Haemmerle commented on the 2 different scenarios. He wanted to know which one would work better. The 3rd drawing is more standard. Hydraulically they are equal. The 1st drawing requires more finesse to be sure it works. The 3rd requires more fill.

Tom Hellen, City Engineer commented that you can not put fill in above the base line elevation, per ordinance. The option on the left meets our ordinance. Fritz asked if the road can handle the weight of emergency vehicles. Nobody answered definitively. Separate flood hazard development would be required for the fire department. Ned Williamson, City Attorney said there were two things we could do. One would be a conditional approval with subsequent flood hazard development permit and second would be denial.

Haemmerle asked Fire Chief Chapman if he's reviewed these plans. Chapman explained that the lower base flood plan has been reviewed. It appears to meet his concerns but they would need to submit plans to check on weight load. Other concerns Chapman has are fire hydrans. They would need to be personally maintained. Building height would need to be evaluated and they would need a 2nd access.

Burke opened the public hearing.

John Sieler, resident at 1315 Warm Springs Road, represented the neighbors. He feels the application does not meet the subdivision ordinance. He went on to review the subdivision ordinance. Haemmerle asked Sieler how he knows why this was platted this way. John said there is a record at the City of Hailey. Haemmerle asked for clarification but a concise answer was not given.

Seiler went on to quote Mayor McBryant as saying after the 2006 flood that if we knew then what we know now this area would never have been developed. Seiler said that Mr. Brockway has said that water does not go over this property but others are here to say the contrary. This is a much bigger lot than the ones around it. There is confusion over what is allowed in the flood plain.

Ed Northern of 340 Cedar Street spoke. Mr. Northern is reiterating the importance of access and fire emergency access. Northern is concerned for the residents and firefighters. Firefighters are going to risk their lives to save life and property. If no road access is available they will have to access through the water (firefighters and equipment). The majority are volunteers. The water does flow thru the property. He saw it in the last flood. If residents have an emergency they will call 911 even if they've signed off on the risk. It is not only putting that home at risk, it is putting the homes around it at risk as well. This will reduce the number of resources available for other emergencies if we are using all our resources to get to this address to help. Northern encouraged council to deny this application. He used the recent fire as an example of following Chief Chapman's recommendations. Burke thanked him for his comments.

Ellie Ellis residing at 411 Della Vista Dr. stated that she had flowing water on her property during the last flood. There was also flowing water on the Bullotti lot. FEMA will be coming up with new flood plain delineations. Because of what happened things are changing. The expediency of making a decision is important, however, this is effecting how the ordinance is upheld and flood insurance rates are figured. She asked that council listen to P&Z. Ellie Ellis asked council to deny this application.

Craig Lawrence residing at 910 Silverstar spoke of safety concerns. Cars will be coming down this road toward his home. (Newly created intersection.) The headlights will go directly into his new remodel. (Living Room & Bedroom) The fill will displace the water onto other properties. The displaced water can go into the crawl spaces and cause mildew etc. This is in violation of the flood plain ordinance.

Tom Drougas residing at 921 Silver Star said he is concerned about drainage and damage to trees.

Amy Browing residing at 331 Della Vista submitted a picture taken a week after the water started to recede. The picture will now become part of the record.

Carmen Northern residing at 340 Cedar St. said that Northern observed that there is a swall on the property adjacent to theirs. The water was flowing on Mr. Bulotti's property. The water was about 10 to 12 inches deep flowing, not ground water

Robert Payne residing at 321 Della Vista explained that originally the water did not flow because the city was sand bagging. The water went on the property after the sand bags were removed.

Dave Hardy residing at 921 Silverstar spoke and said when the water comes in it moves rapidly; it is not standing water.

Burke closed the public hearing.

Chuck Brockway addressed the concerns of the people. Brockway talked about the box culvert requiring a foundation. The footprint is the whole bottom of culvert. . It will be dealt with during the engineering process, it is not an issue. It is a concrete box culvert; it is not susceptible to damage. He can make the 25' fill limit work. The Box culvert will not clog with timber; it is not a river we're dealing with. They are required to fulfill the 100 year flood plan. The 2006 flood was a 160 year event. The culvert will not cause the water to rise. The culvert will not affect the ground water levels. It would not displace any water. They have objective standards they have to meet. He feels they have met these. Haemmerle asked no matter what house is built there it will not affect any other properties around it? Brockway concurred that where they will be building the house is dry land and will not effect flooding or ground water. Brockway was asked about the plan for the road. He explained that nobody has seen a plan. He then stated that this would not change his opinion of the Hydrology of the road.

Gary Slette spoke saying that his goal is to find a resolution and a solution. With the modifications they have made they feel they have done that. He looked at the photograph from Ms. Browning and he is proposing that a culvert will fix that problem. On behalf of the Buliotti's they will agree with Chief Chapman and Planner Shay's recommendations.

Chief Chapman addressed the turn around and the intent of the fire code for extended driveways. There is a turn out every 150' and turnaround at end. Where ever there is a fire hydrant there would need to be a turnout. Tom Hellen, City Engineer agreed with Brockway that it was ground water rising. It will rise to the same level. It was ground water rising, not the river rising in that spot.

Burke questioned who would grant the Flood Hazard Development Permit. Shay advised that the board is made up of Dave Ferguson, Building Official, Tom Hellen, City Engineer and Diane Shay, City Planner. They would be the ones to issue the permit.

It was suggested that an outside Hydologist be hired for a review of this plan. It was said that the applicant would have to pay for this study. Keirn asked if the applicant would be willing to fund this outside review. Slette said that if council makes this analysis a condition of approval they have very little choice.

Haemmerle spoke to say that he feels there should be no building in the flood plain. However, he pointed out that we developed rules. Our concern on this was access. He feels we cannot make a decision because we don't have an opinion of an engineer regarding road specifications. He agreed that we may want an independent Hydrologist and that his findings be presented to the City. He would like the reports available in reasonable time for people to review.

Haemmerle made a motion to continue this matter until more information is received, including an opinion of a Professional Engineer with expertise on water issues on construction of road and the opinion of a Hydrologist to get more

information on if a road can be designed to handle a fire apparatus and if this can be done to not endanger anybody's property. Keirn seconded; the motion carried unanimously.

OLD BUSINESS

3RD Reading of Ordinance 999, Hailey Arts Commission & Percent for Public Art Ordinance.

Keirn moved to read Ordinance 999 by title only. Brown seconded; motion carried unanimously. Williamson advised that the summary of the ordinance would be on the next agenda.

NEW BUSINESS

Discussion of Sewer Service Extension Policy and Agreement for sewer hookup with Spring Canyon Ranch (continued from Dec. 20, 2007)

Rick Davis recused himself.

Martha Burke, Council President Chaired this portion of the meeting. Williamson explained that at the last meeting Carol Brown had asked for a policy for the Hailey Sewer Extension. It is found in the council packets on pg. 141. Williamson went over the policy in detail. Burke opened up the meeting for public comment. Haemmerle said that he thinks it is a mistake to vote on an extended services agreement when they have not yet voted or adopted a policy. He went on to say that this is now 2 separate items. The citizens of Hailey should have the ability to say if they would like city sewer lines extended.

Request for further information was supplied by Tom Hellen, City Engineer. The capacity would be at 76% if everything was built out. The maximum density would be 88% if we include Quigley.

Brown informed council and the public that she had exparte' communication to report. She went over two memo's she received and informed staff that she talked to Jeanne Cassell, President, Board of Directors Croy Canyon Ranch Foundation and Stefanie Marvel sent her an article. Ron Taylor has been sent memos. Burke reported that she spoke to Mary Ann Mix, Rick Baird, Elizabeth Lonning, and Jeanne Cassell.

Hellen went on to apologize for his first memo if it caused confusion. The point of the memo was to make council aware that there is a limit. The city of Hailey is in the middle of a study projecting the next 20 years. The 2nd memo Hellen sent explained that there is capacity in the plant for the extension of services. At 76% we would automatically be looking at enlarging the sewer system. This project would add 2 % capacity to the plant. Haemmerle asked how many properties are not connected to the sewer system. Hellen advised that there is potential of 3000 homes out the canyon. Haemmerle asked when or if the sewer had been extended to any other properties or developments. Heather Dawson, City Clerk said that sewer had not been extended after the initial sewer system was built until the Peregrin Sewer Extension agreement was signed.

Burke asked Williamson to go over the City Service Agreement that was presented in December. Williamson had eliminated any 3rd party rights. The developer has agreed to develop bridge and donate 10 acres to the Croy Canyon Ranch Foundation and donate one million dollars. \$250,000 will be donated at a time and the rest will be paid at time of connection. They will pay the same as the citizens of Hailey plus \$3,000. They will also construct the entire infrastructure.

Burke pointed out that Becky Keefer, from the Parks & Lands Board has already spelled out what she feels is important components such as the emergency access bridge, refrigerated ice and many others. It's broader than a sewer connection. Keefer's letter is noted in the minutes.

Burke pointed out that we've had a public hearing and would now like to move ahead. Haemmerle thought it a bad idea to move ahead because the policy is not approved. This is the first time ever to approve city services outside the corporate limits. Burke would like to go ahead and adopt the agreement. Keirn said we got the agreement before the policy. Brown did not want to delay discussion.

There are two memos' that were received that were not part of the packet. Brown asked that they become part of the permanent packet. Williamson went over the policy in detail. There were no questions from any council on any matter until point (8) which read: "The new use seeking an extension shall provide additional consideration and/or material benefits(s) to the citizens of Hailey. The consideration and benefits shall be determined in the sole and absolute discretion of the City of Hailey."

Brown liked that language. Haemmerle did not. Haemmerle used the comparison that we have the only good available and we have to do what we can. He thinks there should be a fee schedule so they know what the price is and it is not an arbitrary decision based on likes and dislikes. Burke explained the integrity of council to Haemmerle. There was a lengthy discussion as Haemmerle feels we are operating without standards.

Haemmerle than made the comment that if council is ok with moving forward without standards he would stand alone in his dissent. He felt this is bad business. Brown asked for suggestion as to what will work and they will be happy to look at that. Haemmerle would like to add the following 2 bullets to the policy.

1 – If there is consent to annexation he would like that put in policy

2 – If there is going to be extension beyond corporate limits that should also be put in the policy. There should be a water sewer district in place and we should have a joint operating agreement with that district. Williamson does not feel the water sewer district needs to be in place. Peregrine was the seed to start it. Haemmerle would like the district to manage the line and then have a joint operating agreement with the city. There should be some limit as to potential of how far the line goes out. Brown thinks the limit should be not south, not very far north – just east & west. Haemmerle is fundamentally against any extension.

Brown was comfortable with the agreement as it stands. Keirn felt the city residents will have no impact now or in the future. Once the sewer line is installed it then becomes property of the city. Brown asked for a limited public hearing.

Vanessa Cosgrove Frye, of Citizens for Smart Growth spoke in support of Haemmerle. She agrees that possibly voting on agreement before policy seems backwards to her.

Morgan Brown – President of Board of Citizens for Smart Growth said he is the owner of Whole Water Systems, a sustainable business. Extending sewer systems is a large concern. Consolidated sewer is not necessarily good. We all need better managed distributed waste water systems. We have very sensitive water shed. There are better ways to do this. Sewer lines cause environmental problems, lower water levels.

Peter Lobb residing at 403 E Carbonate spoke. He talked about reinforcing the settlement we made with Peregrine Ranch. He's with Haemmerle on this one. If we knew back then that we would sell the services to the county it would not have passed. He said that Haemmerle is right, we need some policies.

Jeanne Cassell, President, Board of Directors for Croy Canyon Ranch Foundation spoke. She pointed out that in 2004 the council agreed to extend services.

Heather Dawson, City Clerks entered 2 pieces of correspondence related to preservation of the hot springs for public use.

Geoffrey Moore residing at 1250 Woodside Blvd spoke against doing the policy after the vote. It is wrong. This is a unique policy.

Burke explained that everyone should put their concerns in writing and have them as part of the packet for the next time they meet.

It was decided that the policy will come back as a public hearing. **Brown made a motion to continue to the January 28, 2008 meeting to insure that the policy is heard prior to the meeting. Haemmerle seconded; motion carried unanimously.**

Continued Discussion by Council on options for marijuana issue

Haemmerle asked Mayor Davis to go thru each option one by one. The three options are 1 – Hailey City Council could repeal all three ordinances. 2 – Hailey could pursue a declaratory judgment action in which affected city officials could sue the City of Hailey, asking the district court to determine whether various provisions are legal. 3 – The City Council could amend the initiatives. Davis pointed out that they have all taken an oath. There are parts of the initiatives that are legal. Keirn feels that amending it is basically an appeal. Haemmerle asked if we can amend initiatives for any reason. Williamson confirmed. Burke has huge concerns about repealing the initiatives. Those who voted in the last election really believed the marijuana laws need to be changed. Burke thinks the public wanted the law addressed. Burke would like to amend.

Haemmerle moved to amend initiatives because of their oath's to uphold the law.

Keirn seconded. Haemmerle said is in violation of both federal and state law the way it is written. Williamson submitted to council 3 amendment recommendations. Haemmerle asked for the fundamental purpose of the committee. The outline is in the packet of what

the committee is responsible for. Williamson pointed out that the composition of committee must have a member of the liberty lobby. You can allow that but you have to decide that. This board has absolute discretion to amend the law. Williamson told council that he tried to amend based on legal issues only..

Haemmerle amended the motion to review each initiative one by one to decide if the draft amendments or other amendments are appropriate. Burke seconded; amendment carried unanimously, and then the amended motion carried unanimously.

Keirn moved to continue this issue to the next meeting. Burke seconded; motion carried unanimously.

Selection of Attorney to represent Hailey on Indian Creek water rights objections

Haemmerle disclosed that Pat Brown, one of the applicants rents office space from him. Haemmerle therefore recused himself.

Carol Brown asked Williamson if both applicants were competent. Williams feels both would be good choices. Carol Brown asked if one was cheaper than the other. Williamson said Pat Brown was less expensive. Carol Brown moved to authorize Mayor Davis to sign the contract with Hutchinson and Brown to represent the City on the Indian Creek water rights issue. Burke seconded; motion carried unanimously.

WORKSHOPS

Attorney Reports – Blaine County Housing Authority Contract for Services

There was a discussion of contract for services. Anna Mathieu is here and is able to speak for the Blaine County Housing Authority. The contract was adopted in 2002. There are 2 separate deed restrictions. Hailey is the only entity who has an alternative deed restriction. Williamson wants to update the housing needs assessment in Hailey. He has drafted a contract with a number of material provisions that are outlined in the packet. Keirn and Haemmerle both have problems with one of the provisions and that is they do not want to amend the ordinance. BCHA wants to be reimbursement for \$12,300 in expenses for 52 hours of staff time. Haemmerle thinks we should pay the fees if they are in our contract. It was explained that the \$12,300 is on top of the fees that were set. Haemmerle than asked if this fee is covered under the contract or not. Williamson explained that we do not have to pay the fee. Brown is looking at splitting the fees with them. Keirn asked if we can afford to do that. Dawson said we can.

Anna Mathieu spoke in regards to the \$12,300 charge. She advised that the communication could have been a lot better as to what they wanted done. Last year there was a request for \$15,000 from the City of Hailey and it was ignored. BCHA continued to come to meetings in everybody's best interest. Mathieu asked council to step up as much as possible. Brown would like to proceed with offering half. Dawson confirmed that we have the funds. **Brown moved to authorize Ned Williamson, City Attorney to negotiate with BKHA. Burke seconded, motion carried unanimously.**

Staff Reports -

Dawson reported that this year's city budget is \$11,000,000, of which \$6,000,000 is the general fund. Of that \$6,000,000, approximately \$2,000,000 is set aside for the capital improvement plan. The operating budget is \$4,000,000.

Mayor Davis had requested information about how the construction slow-down in Hailey has affected the budget. In 2006/07 s we estimated receiving \$710,000 in fees. The actual revenue was \$365,000. If the same slow trend occurs in building and development this year, our Operating revenue could be \$270,000 less than we budgeted.

Dawson reported that she will approve the Blaine County Recreation District Ice Hockey tournament event that will happen this weekend at Hailey Ice. The application was filed late and they do not expect over 50 people at a time on the ice.

Hellen reported that the snow removal crew worked 60 – 70 hours last week. Staff will have Friday off. Budget is taking a hit with fuel costs and staffing for snow removal.

Burke & Brown both asked for email address corrections to be given to staff.

Keirn reported that he will be attending a SIEDO retreat tomorrow in Twin

Burke moved to go into executive session to discuss personnel issues (IC 67-2345.a/b/d) pending litigation and personnel issues. Brown seconded; motion carried unanimously. The council went into executive session at 9:52pm., after which the meeting was adjourned.