

**MINUTES OF THE SPECIAL MEETING
OF THE HAILEY CITY COUNCIL
HELD MONDAY AUGUST 18, 2008
IN HAILEY CITY HALL MEETING ROOM**

The special meeting of the Hailey City Council was called to order at 5:30 P.M. by Mayor Rick Davis. Present were Council members Carol Brown and Don Keirn and Martha Burke and Fritz Haemmerle. Staff present included City Administrator Heather Dawson, City Attorney Ned Williamson, and City Clerk Mary Cone.

OPEN SESSION:

Bob Wiederrick of 1120 Quiqley Road asked about the survey crews around his business location in Airport West. He understands that there has been an issue with encroachment of this city property but does not think a fence is the answer. Tom Hellen addressed this issue. This area is an easement for the pump station and discharge line from the Big Wood River; we (city of Hailey) need access to this area. We have had a continuous problem with owners in this area encroaching on this property and as a solution have planned to put a fence around it. Wiederrick suggests putting unpaved parking (park and ride) here to use this area.

CONSENT AGENDA:

CA 292 item was pulled by Williamson

CA 293 item was pulled by Brown

CA 291 item was pulled by Haemmerle – he is on the Rotarun board so he should not vote on this item

CA 287	Motion to authorize Mayor to sign the Idaho Power work order agreement for moving the street light at 2 nd & Croy to the NE corner	1
CA 288	Motion to authorize Mayor to sign two IDWR Permit Applications for Indian Creek winter water rights	14
CA 289	Motion to authorize Mayor to sign two Safe Routes to School ITD forms	24
CA 290	Motion to approve Special Event – WRHS Homecoming Parade on Main Street, September 26, 2008, from 3 pm – 3:30 pm	27
CA 291	Motion to approve Special Event – First Annual Croy Fun Run & Rotarun Concert at Hop Porter Park on September 07, 2008, 9 am – 8:30 pm	47
CA 292	Motion to approve Summary of Ordinance 1013 – Tree Ordinance.....	56
CA 293	Motion to approve Harry Rinker’s offer to equally split SPF Engineering billing fees for the analysis for a recharge program on the Peregrine Ranch.....	59
CA 294	Motion to approve minutes from August 11, 2008 meeting and suspend reading of them	

CONSENT AGENDA:

Motion was made to approve all other Consent Agenda items by Keirn, seconded by Burke, motion passed unanimously.

CA 291 – Motion to approve Special Event – First Annual Croy Fun Run & Rotarun Concert at Hop Porter Park on September 07, 2008, 9 am – 8:30 pm

Burke makes motion to approve CA291, seconded by Brown, motion carries. Fritz Haemmerle abstains from this vote.

Williamson – mistake on title changed the title from chapter 2.2 to 12.20

CA 292 – Motion to approve Summary of Ordinance 1013 – Tree Ordinance
Williamson points out a mistake on pg. 57 – 4th line down from the title, mistake on title changed the title from chapter 2.2 to 12.20

Brown makes motion to approve the summary of Ordinance 1013 with the noted change by Williamson, seconded by Keirn, motion passed unanimously.

CA 293 – Motion to approve Harry Rinker’s offer to equally split SPF Engineering billing fees for the analysis for a recharge program on the Peregrine Ranch

Brown asked why we are splitting fees; she thought there was not going to be a charge for this analysis. Mayor Davis addressed this question and let Brown know that the council did discuss this and thought that it would be invaluable information and prudent to use funds from Water and Wastewater to pay for it.

Brown moved to approve CA 293, seconded by Keirn, motion passed unanimously.

OLD BUSINESS:

OB295 - 3rd Reading by Title only of proposed Ordinance 1010, amendment to Municipal Code Section 2.40 - City Meetings Procedure with amendments as directed by City Council on July 14th, 2008 and motion to authorize Mayor to sign

Motion made by Burke to conduct the 3rd Reading by title only and authorize the Mayor to sign, seconded by Brown, motion passed unanimously. Mayor Davis conducted 3rd Reading by title only.

WORKSHOP:

Dawson wanted the council to know that the Mayor and staff discussed an enforcement policy a couple of weeks ago. It is being put into written form and will be in your next packet. The procedures will outline enforcement priorities, violations of zoning ordinance and municipal code. It will be prioritized by three main categories, first being life safety, second being nuisance or problem to others and lastly property value protection. i.e. It is one of the reasons our police department continues to get dogs off the street, because it is deemed a life safety priority.

Brown has a Library Board meeting tomorrow; they will be discussing exciting things despite a tight budget.

**CITY COUNCIL MINUTES
August 18, 2008**

Mayor Davis has emailed Becki Keefer and Denise Jackson about the Tree Ordinance. They are lining up letters of interest for council to review in the near future.

PUBLIC HEARINGS:

PH 296 – Continued from August 11, 2008 – Fiscal Year 2008-2009 Budget – County Dispatch Funding

Mayor Davis commented on Dawson's suggested budget cuts for County Dispatch funding. Davis appreciates the hard work Dawson put into the proposed cuts, but he is concerned about cutting those services that benefit the citizens of our community.

Brown commented that it does make sense. Brown donates money to the Animal Shelter, so wanted to disclose this fact. Brown is not sure about removing funding for the Animal Shelter. Brown is ok with funding \$50,000 to the County for Dispatch.

Haemmerle is concerned that we don't have an agreement with Blaine County to put this situation on an override levy yet. He would like to see a commitment by the County prior to discussing the dollar amount. He feels this is important in showing good faith to bridge the gap but he is not sure we are legally bound to fund this service.

Keirn concurs with Haemmerle and Brown.

Vanessa Cosgrove (with citizens for smart growth) spoke to clarify that there is a county levy override line item on the county's agenda for tomorrow's meeting, but it is not specific to dispatch. The item is not specific to dispatch but they will discuss dispatch with the open space initiative.

Burke has reservations with committing dollars without knowing where the funds will be applied and whether or not the county will put on an override levy. She would prefer to come up with an amount. We need to hear from the county and need to have an understanding what the future funding/spending will look like. The community must give their input on this funding.

Haemmerle suggests a joint powers board to regulate how this money is being used.

Mayor Davis asked for public comment.

Joanne Dixon with the Animal Shelter, wanted to clarify impound vs. animal control. Dixon handed out document to let council know what the impound fees are annually. They don't do anything with the animal control piece and wanted council to recognize this distinction.

Jim Spinelli the Executive Director of the Hailey Chamber of Commerce residing at 1020 Moonlight Drive spoke. Spinelli suggests there is some token amount specified (to give

to the County Dispatch) but there should be provisos with it. Spinelli discusses the recent Chamber accomplishments, directly linked to the quarterly invoice given to the City of Hailey from the Chamber. The accomplishments included hanging baskets on Main Street, 4th of July activities, improved Springfest and the homecoming parade for the high school. He asked the council to consider that these events benefited local businesses and not the Hailey Chamber of Commerce.

Jason Miller, Executive Director of Mountain Rides Transportation is in agreement with the Chamber of Commerce's concern with potential cuts in funding next year's contract. Mountain Rides operates as joint powers and he feels this is very effective. Mountain Rides wishes that the council carefully consider cuts to the decrease in funding proposed by Dawson. They are making steps to decrease costs within their own organization to be more fiscally responsible.

Krista Gurkey of 120 Prairie Sun is here representing the Chamber of Commerce but she supports all of the groups identified on the list presented by Dawson. Gurkey wants the council to find another way to fund this dispatch other than cut funding for these sources.

Vanessa Crosgrove with Sustain Blaine and also Executive Director of Citizens for Smart Growth spoke to council. Cosgrove wanted council to consider some type of token funding to help these organizations and hopes they will have a seat at the table as they move forward with developing a long term strategy.

Dawson spoke to clarify a couple of points. First, this discussion taking place tonight was one that staff had hoped to avoid by initially cutting the budget by 10% percent. We reduced the budget where possible without hurting ourselves while still mindful of councils' goals. We initially tied out budget development to council's goals in the first draft. Dawson referred to page 76 of the packet; she pointed council to the \$2500 to teletype, and believes this is no longer needed with the current equipment. Chief Gunter spoke with Bob Greenlaw and this \$2500 will be increased to \$12,500. Correction, this is needed and may need to be increased.

Dawson adds that The Advocates contract was never submitted. Does council want to fund something that the entity is not actively asking for?

Dawson suggests that we can get half funding from the vehicle that the county uses for animal control.

Brown went through list and discussed items she was comfortable with eliminating and items she is not comfortable with eliminating. Brown suggests taking \$50,000 from the general fund and \$10,000 from the CIP fund; she does not want to but doesn't see any better way.

If Hailey gives this money for an override, Haemmerle wants to see a joint powers board.

Mayor Davis summarizes, potential \$60,000 funding for a one-time, good faith, county override. Davis asked Williamson to contact Tom Bowman to let them know. Brown would like to see the city administrator to be present at tomorrow's meeting at 11 am. Dawson can attend the meeting at 9 am, Burke can go at 9 also. Keirn can go at noon. Mayor Davis has a noon meeting so will have to leave shortly before then.

Dawson discussed areas for potential cuts:

\$11,000 in police department time in writing water enforcements (mid May-mid Sept)

The Advocates \$2500

SIEDO \$6000

Teletype \$2500

\$10,000 for park signs

\$16,000 Switching park service and LOT funds, Dawson commented that funds need to be shifted if this taken from LOT.

\$6000 Blaine County Housing Authority

\$12,760 – by delaying the hiring of the assistant city engineer until Feb. 2009

And approx. \$22,000 from Annexation funds

Mayor Davis summarizes the discussion with council and out of good faith they want to give the County Dispatch \$60,000. Haemmerle thinks that the joint powers governing board may be premature if the levy override passes. The joint powers agreement does not come into play when this funding is a one-time payment Haemmerle adds.

Williamson will take this message to the County tomorrow.

PH 297 – An application by Bulotti Construction, Inc. for a Floodplain Development Permit and Preliminary Plat approval of the subdivision of Lot 15, Block 1, Birdwood Subdivision (911 Silver Star Drive) to create 2 lots within the Limited Residential (LR-1) Zoning District and the Flood Hazard Overlay District. The Hailey Planning and Zoning Commission recommended denial of this application.

Mayor Davis and Council member Brown recused themselves from this discussion.

Martha Burke, Council President took over the meeting for PH 297 discussion.

Burke asked for a staff overview. Williamson reviewed the history of this applicant. The latest set of hearings involved denial in 2007 by the Planning & Zoning Commission based on 3 sections of the flood plain ordinance. It was originally proposed as a 4 lot subdivision, they are asking now for a 2 lot subdivision. The City Council heard this in the beginning of Jan. 2008 where it was continued for more information on possibility of Emergency Vehicles traveling on the roadway. An engineer was hired by the city to determine whether or not emergency vehicles would be able to travel and if modifications to the roadway would endanger anyone's property. In the May 19th council meeting (Williamson did not attend this meeting) – the council denied this application, 410.7.2 sub section A & B. Council denied application for slightly different reasons than the

Planning and Zoning commission. Williamson listened to tape of the May 19th meeting. The tape indicated that 2 council members thought the meeting was an appeal, it was not. Also an undisclosed site visit was conducted by a council member. At Williamson's request council rescinded the May 19th decision and the application was resubmitted, re-noticed. Williamson reminded council as to their concerns in the Jan 2008 meeting. He suggested focusing on the standards located on page 125 of their packet.

Robrahn addressed the notice issue. The incorrect mailing list was used to mail notices for the meeting about a month ago. The correct list was used for this meeting notice.

Haemmerle asked city attorney Williamson about the reasonable safety/harm in the ordinance. Williamson suggested that council should consider that reasonableness should be implied in this interpretation.

Keirn visited the site at the peak of the flood. Burke was there during the second application process for applicant. Burke stated that she knows Siler.

Haemmerle at one point drove by the property and someone noted that it was the Bulotti owned land.

Burke visited the site prior to the re-application of the 2 lots subdivision looking at the driveway area.

Gary Slette spoke representing Bulotti Construction (the applicant). He was with Chuck Brockway of Brockway Engineering and Bryan Yeager with Galena Engineers. Slette spoke to the council regarding the May 19th meeting where Mr. Fisher and some neighbors expressed dissatisfaction with the box culvert. In light of these comments, Chuck Brockway revised the culvert design as a result of the May 19th discussion. Slette obtained multiple documents in a public records request to determine how the city has interpreted the floodplain ordinance in the past.

Williamson asked Slette if he was comfortable with the conditions of approval on page 19, A-H.

Chuck Brockway with Brockway Engineering discussed the changes to the box culvert. It was the type of structure recommended by the opposition at the last hearing and is hydraulically equivalent to the 4 pipe arches in his previous design but it has some benefits. Chiefly it is easier to get at to clean if necessary, and looks better aesthetically. Due to its design it is slightly hydraulically more efficient. Still he is limited by the city ordinance on the height. Scott Kern with SPF Engineering concurred with this design as indicated in the council's packet by his letter to the city engineer, Tom Hellen. To summarize, Brockway does not feel there will be risk to life or property and this design meets FEMA's standards.

Haemmerle asked Brockway to look at the letter from SPF Engineering regarding past and present designs of the box culvert. Slette clarifies the ordinance; there is no increase

in flood heights or velocity. Brockway responded. What happened if the culvert had sediment? Brockway recounted that there would be a point if the culvert had sediment blockage that it would cause flooding. Brockway states that you cannot take into account sediment build up when considering culverts. The criteria are: Is the culvert as designed, that there will be no increase risk to life or property. Brockway implores that the design and FEMA standards are what should be considered when looking at this interpretation, not maintenance of the culvert.

Brian Yeager of Galena Engineering spoke. Yeager answered that the street would be able to carry fire departments vehicles if needed. They want a general consideration from council consistent with other similar application decisions. Yeager thinks this ordinance is to allow the city to put culverts in if necessary.

Brockway asked that council focus on the ordinance where it states “no danger to life or property due to increased flood heights, or velocities or materials being swept on the property.” Brockway referred to page 132 a letter from SPF engineering, “...the structure is not expected to cause no net rise in the 100 year base flood elevation.” Brockway clarifies for Williamson that the 55.6 cubic feet per second is the 100 year flood number.

Slette referred to a letter written to him by Williamson on June 10, 2008 regarding Slette’s public records request. Cedar Bend subdivision lot approval was used as an example. Several single family homes were approved that are in the floodplain; Jamie Coulter’s house is one of them referenced. Slette concludes that past decisions of property in the floodplain, indicate that the city should be consistent and approve this application. Williamson noted that this public records request information was provided to council in July 14th meeting packet.

Keith Roark spoke on behalf of some of the members of the homeowners association. Roark is present to ask for clarification as to what the council is doing tonight. He is not sure why the city attorney stated that the council needed to rescind their decision in May 19th meeting. As a former mayor of this city and an attorney, he is confused by council’s decision to rescind their decision.

Craig Lawrence from 910 Silver Star – as a citizen, his stance is still the same as before when he spoke to the council. Lawrence remembers that Brockway could not tell Haemmerle in the May 19th meeting that he could not guarantee danger of life or flooding due to lack of culvert maintenance.

Tom Drougas lives at 821 Silver Star. Drougas conveyed that the issue of maintenance is key to tonight’s discussion. Drougas shows council a picture taken yesterday of the property in question. Chapter 8.08.020 – public nuisances which constitute fire hazard – he reads this section of the ordinance. Maintenance on this property is an issue because as it stands today, this property is a fire hazard today in his estimation if someone were to drive by and drop a match close to the property. Drougas shows an aerial map of the area. And also hands out Maps from the May 19th 2006 flooding. He sees that council is trying to make decisions on FEMA standards is a “moving target.” Drougas points to the

properties in yellow, undeveloped property, and offered to hire a hydrologist specialist to ask the question – what if these properties were developed? A flood hazard assessment, Drougas feels, is necessary before the council makes a decision to approve of more development in this area. Drougas thinks council should consider undeveloped property with the CIP plan.

Steve Fischer for the neighbors, spoke with the council. He thanked the applicant for the changes they made with the application but feels this is still a poor place to build. This area has cumulative effects of development. Fischer feels that the city has a fiduciary responsibility to determine whether more development was beneficial or not. Staff report, page 19, under policy, Fischer states (item D); buildings have been built in the flood plain. Fischer believes that the applicant needs a Flood Hazard Management Plan to potentially build on this property. Maintenance of this culvert, Fischer believes, will be an issue and difficult. Williamson wants Fischer to explain the 8 inches vs. 21 inches statement – Fischer make a correction it is 1 ½ feet of clearance, not 8 inches as he mentioned.

Williamson asked if Fischer had an issue with Brockway or SPF Engineering conclusions. Fischer does not have an issue with them. Is there a way to avoid sediment build up in this box culvert, asks Williamson? Fischer responds to this question by stating that there is nothing that can be done to avoid sediment build up. Burke asks if groundwater provides sediment build up. Fischer replies that groundwater does not carry the same level of sediment that flood water does. Flood water carries debris and sediment at a higher level than groundwater.

Haemmerle asks if there is a difference to building on the existing lots (brought up by Drougas' map, given to council tonight). Fischer says both houses and culverts should be reviewed to determine whether construction complies with standards set in place. Fischer offers that the client should wait until the Flood Hazard Management Study is made.

Dennis Hagy – owns lot 4 adjacent to the property in question. He would be the first to call for lack of maintenance – sediment.

Ellie Ellis lives adjacent to Bulotti's property. She lived in the area during the flood in 2006. Ellis did pump water out of her crawl space during the flood. She is concerned about the small children in close proximity to this property; she feels this would be a potential flood (drowning) and cited that drowning is the second leading cause of death for children. In the bigger picture, the council is there to uphold the ordinance, Ellis stated. Secondly, Ellis pointed to a 2004 letter written by an attorney from the Association of Flood Plain Managers advising cities take a "no adverse impact approach" in the ordinance. The FEMA standards don't address, states Ellis what would happen if these properties were developed. Ellis does not understand why the council is hearing this application again.

Burke brings comments back to applicant. Brockway will address technical comments.

Chuck Brockway of Brockway Engineering clarifies the mention of a .04 foot change; this is a decrease (meaning the culvert has greater conveyance capacity than the existing shallow vegetative swale). The culvert has greater conveyance capacity than the swale has. And a culvert is not the same as a constructed house. A culvert is a conveyance of water, a house is a blockage to conveyance of water. This culvert is not impossible to maintain, debris and sediment can be removed easily from it. He believes that groundwater rising contains virtually no sediment (referring to Burke's question of groundwater to Steve Fischer). Brockway disagrees that the culvert will silt completely up to ground level in one year. And adds there is no evidence to support this claim.

Brockway addresses a statement that the road should be above base level. He agrees with this statement and thinks it would be a better design. The ordinance does not allow the design to be above base level. Brockway calls attention to a statement made comparing sediment build up in box culverts versus pipe culverts. Water does not know what type of culvert it is flowing through, so the claim that a box culvert accumulates less sediment is wrong.

Clarification on last meeting's question from Haemmerle. This hypothetical situation cannot be answered because you cannot know how much sediment is present in the culvert. The pipe arch culverts convey the same amount of water as the box culvert. Brockway reiterates that the applicant has met the design standards for this property (FEMA's standards and the city's ordinance standards). This culvert will not defer water onto other properties as designed. Brockway explains that if sediment were to block the culvert, water would go over the roadway not onto another adjacent property.

Don Keirn asked once this water goes over the road, where does it end up. Brockway answers, back into the swale. FEMA states, that you build a culvert, you assume that it is open, and act like it will always be open. FEMA determines that it is okay to increase flood plain by one foot. Hailey has a more strict standard than FEMA.

Brian Yeager made an observation to council. The criteria that we are discussing, flood plain criteria, is being scrutinized to a level where no one will be able to meet the standards set in place. Yeager wants council to consider when another property applies in the future for development, no one can say there is no possible way to guarantee "no danger to property or life." Yeager wants to be able to advise future clients.

Gary Slette adds that he platted lots vs. house construction. Slette believes that Williamson is trying to bring awareness to council that it should be consistent with past city council flood plain development decisions. Slette asks council to interpret the ordinance that there is no increase danger to life or property. Slette believes this applicant deserves approval.

Williamson comments that maintenance should be conducted on this culvert, if this application is approved. Slette poses a solution to the maintenance by using a Ketchum situation. Ask the homeowners to certify annually that sediment has been cleaned out, they would (the neighbors) be willing to oversee that this culvert is maintained.

Burke pulls discussion back to council. Burke summarizes that the council has a duty to consider the reasonableness to this application. Burke does not believe in absolutes and asks council to address this in their comments.

Haemmerle adds that in the legal world clear interpretation must be conveyed.

Don Keirn states that you must carry the “no” on through. Keirn believes Slette has a very good idea with the inspection certification. If this can be done, this will alleviate one Keirn’s concerns.

Haemmerle revisits the last time council heard this information (May 19th). He cannot be guaranteed that water would not enter neighboring properties. Haemmerle cannot assess what is “reasonable.”

Keirn believes that the engineers all state that this is a good design. If we can determine the maintenance issue, Keirn feels this is important to his decisions for this application.

Haemmerle respects Keirn’s analysis but disagrees with some points. Burke asks if they are setting unrealistic standards for future decisions. Haemmerle cannot get past the questions to the applicant on risk of danger.

Burke states the maintenance must be discussed. Haemmerle agrees that the design works provided adequate maintenance. Haemmerle asks what changes council members Keirn and Burke’s minds today versus the May 19th meeting. Keirn replies reiteration of facts and request for reasonableness interpretation by Burke. Burke believes they are making a difficult decision.

Haemmerle states requiring an affidavit to require maintenance is a must. The city must be able to enforce this affidavit. This is a necessity in his mind.

Williamson suggests a condition of approval would be at the final plat issuance. He suggests that council puts approval on the potential lots A and B.

Keirn asks about the maintenance requirement, page 130, 18 & 19 suggested plat note – annual certification is required. Williamson offered to add this language prior to final plat is approved.

Keirn asks Tom Hellen if a flood plain is needed to build a house, yes replied Hellen.

Keirn made a motion to approve preliminary plats of Lots 15A & 15B Birdwood with conditions of approval in staff report A-H, and conforming to applicable subdivision standards, and adding to plat note D, expanding the maintenance of the culvert by the homeowners association. Motion was seconded by Haemmerle; motion was approved by Burke and Keirn, rejected by Haemmerle. Motion carries. Haemmerle interprets the language directly – no means no.

Keirn made a motion to approve preliminary plats of Lots 15A & 15B Birdwood Subdivision subject to conditions of approval in staff report A-H, and conforming to application subdivision standards, with language determined by the city attorney requiring maintenance of the culvert, seconded by Haemmerle. Keirn in favor of motion, Burke in favor of motion, Haemmerle denies. Motion carries.

Haemmerle does not find evidence to support sub section A is supported.

Williamson asked if council will be present at next meeting. Keirn replied that he will not be at the Aug. 28th meeting but will be present on Sept. 8th. Keirn replied that he is out of town until September 1st, 2008.

Burke suggests that the ordinance language be changed to reflect a more reasonable standard and enable clearer direction to council in similar future situations.

With no updates, the council president, Martha Burke adjourned the meeting at 8:48 pm.

Rick Davis, Mayor

Mary Cone, City Clerk