

**MINUTES OF THE MEETING  
OF THE HAILEY CITY COUNCIL  
HELD MONDAY SEPTEMBER 22, 2008  
IN HAILEY CITY HALL MEETING ROOM**

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

**OPEN SESSION COMMENTS:**

Rich McIntyre spoke to council regarding the letter he wrote and read to council last month proposing a workshop to share information on water rights. The earliest time to schedule this workshop is late September or early October. Haemmerle added that the reason that the city was not present at the last meeting was that Tom Hellen did not receive enough notice to make the meeting. Haemmerle suggested that McIntyre give ample (2 weeks) notice to the city before planning the meeting date and time.

Larry Schoen thanked the city for painting crosswalks on First Ave. going North and South. The stripes were not present before and Schoen wanted to say that they are a huge benefit to pedestrians. Hellen stated that he would thank the street department because they were the ones that painted the stripes.

Gerry Kavka of 710 Kintail addressed council regarding Northridge infiltration galleries that he has brought to the cities attention approximately 3 years ago. Kavka believes he knows more about this issue than anyone in the valley. Kavka has spent hours researching this issue and thinks that the city has not provided oversight. Kavka wants the council to take the Indian Creek water initiative seriously and solve this problem.

Tom Geddy spoke to the council; he lives in the county just North of Indian Creek. Geddy believes this is a real important issue and wants the council to be involved with it. He encouraged the county (he attended the last council meeting) to hire a consultant to study this situation.

**CONSENT AGENDA:**

Brown pulled CA345 because she did not attend that meeting.

**Motion was made by Burke to approve all other consent agenda items, seconded by Keirn, motion passed unanimously.**

**CA345 – Motion made by Burke to approve this item, seconded by Haemmerle, motion passed with Brown abstaining.**

**CONSENT AGENDA:**

CA 340 Motion to Approve Findings of Fact and Conclusions of Law – Quigley View Condominiums Final Plat ..... 1

CA 341 Motion to authorize Change Order #2 for Countryside Traffic Signal \$1,218.75 less than first change order..... 11

CA 342 Motion to authorize Mayor to sign and submit Hailey Historic Preservation Commission’s 2008 grant request for historical site assessment of Hailey Rodeo Grounds ..... 14

CA 343 Motion to adopt Resolution 2008-14 amending appointments to the Historic Preservation Commission, adding Valerie Thor and Frank Rowland ..... 15

CA 344 Motion to approve Special Event application for hailey Halloween Hoopla with live, amplified music at KB’s and other Main Street locations..... 17

~~CA 345 Motion to approve minutes from 9/8/08 council meeting and suspend the reading of them ..... 27~~

CA 346 Motion to approve Treasurer’s Revenue and Expense Report for the month of August, 2008 ..... 37

**PUBLIC HEARINGS:**

*PH347 - An application by Blaine County for a right-of-way vacation (abandonment) of a portion of a city street. The subject street is Walnut Street, located between Blocks 104 & 105, east of Fourth Avenue and east of the alley. The application would vacate 20 feet of the street to the adjacent property owner to the north and the adjacent property owner to the south. The Hearing Examiner has recommended denial of this application.*

Lesley Andrus Director with ARCH Community Housing Trust spoke to the council regarding the vacation right-of-way abandonment. ARCH approached the county regarding this property and proposed that if the county leased them the land, that ARCH would build deed restricted community housing on the property for county employees in perpetuity. ARCH learned that they needed an additional 972 square feet of land to construct the two houses and the application in front of council was the way to do this. During this process ARCH learned that the bank would not finance the project because the county was only able to lease land for a maximum time of 5 years. Another option was discovered through IHFA, where Blaine County gives the property to IHFA and then they would transfer it to ARCH. ARCH will maintain it in a trust with the deed restrictions recorded. They used IHFA because that is who ARCH goes to for government funding. The Memorandum of Understanding has been signed and will be recorded tomorrow – September 23, 2008.

Rebekah Helzel of 111 South First Ave. in Ketchum added that the memo of understanding states that if ARCH does not meet their part of the agreement then the land goes back to IHFA and then the county. (if the land was not developed for the intended purpose defined in the agreement)

Larry Schoen spoke on behalf of the County regarding this vacation. They are giving this property to ARCH to develop this property for community housing. Schoen asked for more details on the hearing examiners recommendation.

Beth Robrahn referenced Black vs. Young court case (Ketchum, ID) where it was decided there was no way to guarantee that the land would be earmarked for community

housing. If the land was not developed by ARCH, the land would go back to the county and then there is no way to dictate development after being returned to the original owner (Blaine County). Based on this court case the hearing examiner felt that since there was no way to know for sure that the land would be used for the intended purpose (convenient for the public good) then he could not recommend supporting the vacation.

Ned Williamson presented more details on Black vs. Young where the city of Ketchum conditioned a vacation of an alley. The Supreme Court cited that alley vacations could not be “conditioned.” The same would apply with this street vacation, Williamson stated.

Williamson added that there would be a deed restriction on this property but not sure exactly when this would happen. He believes that the intent is to develop this property for affordable housing. Williamson pointed to the Memorandum of Understanding (that he just received but was not in the packet) number 9.

Robrahn added that if the council vacated this right of way then the hearing examiner suggested that a minimum of 28’ feet would give sufficient room for 2 lots.

Brown gave a copy of Mary Ann Mix’s letter to Blaine County for their review.

Mary Ann Mix (517 East Pine Street) read her letter to council.

Lesley Andrus stated that they received consent from all of the utility companies; they had no objection to the vacation. The exception was Idaho Power and Cox Communications – they wanted 5 foot easement for their utilities.

Hellen addressed Brown’s request for staff comments. Hellen stated that the sewer and water in the alley is not being vacated. Also there is a hydrant that would either be moved or an easement created to get to it. Hellen added there is nothing in the vacated land.

Tom Bergman 220 South 4<sup>th</sup> Street spoke to council. Bergman lives across the alley from this property. Bergman had a question to the county. He appreciates the intent of this use but was wondering if any other property adjacent to this land was considered for a vacation. Bergman thinks that the municipal code states that a condition may be required on a vacation. Bergman has additional questions for another time regarding the subdivision application. Bergman believes that only 13’ of property is needed and does not think that the council should vacate the south side parcel at all.

Peter Lobb of 403 East Carbonate spoke to council. Lobb prefers that we stick to the rules. He does not believe that council should make an exception for this vacation.

Lesley Andrus responds to public comments. The land to the North is owned by Syringa, Andrus went to Boise and met with them and asked for 10’ of their property. Syringa board denied their request. Then Andrus approached Idaho Power to see if they would give some property on the East side of the land. Idaho Power also denied their request.

The only area left to focus on was then the South side of the property to gain the necessary square footage. The other question about vacating both sides (North and South), Andrus was under the impression that it was statutory to handle in this manner. If they can acquire property on just one side then they are agreeable.

Ned Williamson commented on Bergman's question regarding section 50-1306A. There are numerous statutes that apply and when reworking the ordinance he specifically remembers (page 69, 9.1) following the state law 50-311 and 50-317 through 50-1325. Williamson believes that the section Bergman was referring to applies to statutory plats not town site. This was created long before the Local Land Use Planning Act was even considered. Williamson indicated that this code was followed. Williamson then addresses Bergman's statement about only using North or South property. The presumption under the ordinance is that you split it right down the middle and each side goes or as the city council deems in the best interests of the adjoining properties. This code indicates both options are available.

Mayor Davis asked if the property owners to the South were notified. Robrahn confirmed that he was notified and added that he submitted a vacation request on this parcel of property a few years ago and was denied.

Haemmerle is against vacating city property to increase density. These right-of-ways have been in existence for a very long time. He believes that the city should not vacate for any purpose.

Burke asked if LR1 can allow duplexes. Robrahn stated that multi-family housing is not permitted in this zone.

Keirn would accept the hearing examiners suggestion. Also, he concurs with Peter Lobb's concern.

Brown heard the comments regarding "chicken and the egg" but she cannot get past the Hearing examiners suggestion of denial. Brown believes in community housing but not going about it in this way.

**PH347 – Brown moves to accept the hearing examiners findings, seconded by Keirn, motion passed unanimously.**

### **OLD BUSINESS:**

*OB 348 – Review and approve summaries of ballots for proposed referendum ordinances repealing Hailey's Development Impact Fee and Business License Ordinances, Chapters 15.16 and 5.02, Hailey's Municipal Code*

Williamson pointed to the summaries in council's packet for the November 4<sup>th</sup> election. Williamson's cover letter refers to recent court decisions regarding referendums and

initiatives. The Supreme Court will not hear a case on the legality of an initiative / referendums until the citizens have voted on it.

Brown asked if the city can make this payment if the voters accept the proposed repeal. Hellen has spent approximately \$2000 on surveys. All the remaining Development Impact Fees are being held in escrow.

Williamson answered Haemmerle's question regarding the initiative petitions wording being contradictory to the law and the refunds stated in the petition. Williamson noted a case where regardless of the legality or illegality of an initiative or referendum we must use the title submitted in the petition. Referendums repeal ordinances, initiatives create laws. Williamson believes that we should not be biased on the ballot itself.

Mayor Davis is okay with the summary. Brown is also okay with it. Haemmerle applauds Williamson on a clear summary.

**Motion made by Brown to approve the summary of the Business License ballot, seconded by Burke, passed unanimously.**

**Motion made by Brown to approve the summary of the Development Impact Fee ballot, seconded by Burke, passed unanimously.**

**NEW BUSINESS:**

*NB349 – Discussion of proposed amendments to Peregrine Sewer Service Agreement*

Haemmerle recused himself of this discussion as he litigated this agreement. He believes he can be unbiased on the subject but because of his involvement with the project in the past will excuse himself from the discussion.

Williamson discussed the letter from Brian Ballard representing Harry Rinker (pages 89-90 of packet) requesting an extension of the sewer services agreement – due to expire on February 9, 2009. The Peregrine Ranch application is in front of Blaine County Planning and Zoning Commission right now. And the P&Z commission was concerned about this agreement expiring in the near future and suggested an extension as a solution to their concerns.

Mayor Davis disclosed an ex parte conversation with Harry Rinker. Rinker sent an email to Mayor Davis (letter is in packet) and Rinker called Mayor Davis to confirm that this agreement would be on the council's agenda tonight.

Brian Ballard with Hawley Troxell Ennis & Hawley law firm spoke on behalf of Rinker to ask for the extension. Blaine County

Brown did not agree to the initial agreement and does not support this extension. Those were very challenging circumstances which do not exist any longer. Brown would not vote to extend this agreement.

Keirn would support the extension. He understands the economic time and why Rinker would ask for an extension.

Burke would like to post pone a decision because this is a sensitive topic and a big issue before. And now 4 years later, they are asking for a quick decision, adds Burke.

Williamson was not at the County's Planning and Zoning commission meeting. He proposes that we collect questions and then distribute responses later.

Tom Bergen summarized the County's P&Z meeting in a staff capacity.

Brian Ballard gave an abbreviated presentation before. Mayor Davis wanted Ballard to present the entire presentation he had planned.

Ballard added a few points. Ballard summarized that a 9 hole golf course was not proposed. (originally proposed 380 units) This has been reduced 80% to now 72 units proposed. Ballard points to a Memorandum of Understanding upon which the sewer services agreement was based, paragraph 5, states that the agreement shall be 25 years with an option to renew for successive 10 year terms. So, this extension request is not meant to be a "gotcha", states Ballard. If they have to pay for 380 units, then they will take the LI property designated for the cities planned extension; they will develop it right away and the city will have to condemn it to get it. And there are 80 acres they will look at as well. The golf course is not going to be built. Ballard then mentioned that Rinker helped the city of Hailey in the Castle litigation and it would suggest that the council approve this extension.

Burke states that this is a very contentious issue. And it seems that Ballard's statements feel like threats.

Mayor Davis is supportive of this agreement.

Williamson added that council does not have a draft. Council can direct Williamson to draw up an agreement but they can not formally approve of it until the document is in front of them.

**The council conducted a straw vote to direct Williamson to draft an agreement:**

**Keirn yeah, Brown nay, Burke yeah, council directed Williamson to draft the extension agreement.**

**Haemmerle returned to his seat.**

*NB350 – Discussion of options for management and development of community housing*

Williamson addressed council. There was a recent housing meeting where County Commissioner Schoen attended and asked for input from the housing authority. The housing authority was advocating the dissolution of the housing authority entity. Many viewpoints were discussed during this meeting but no decisions were made other than to meet again to discuss further. Other attendees at this meeting included, Heather Dawson, and Don Keirn. Williamson thought that we (the city) could manage the deed restricted units, and points to page 120 in packet to show council how many deed restricted units there are – 13; a manageable number. Dawson believes that staff can qualify individuals if need be and monitor the units. This was the idea in the interim, Williamson asked for council's thoughts on this.

Mayor Davis met with Anna Mathou (Hailey's contact with the housing authority). They had a lengthy discussion regarding the options available, and Mathou believes strongly that there should be one entity valley wide managing the database for those applicants qualified to buy. BCHA has the database; it does not make sense to create another database.

Robrahn clarified that the extent of the recommendation is regarding the existing units not future needs.

Brown added that she believes that the county is looking for a recommendation by the city. Brown suggested that ARCH may pick up the database responsibilities. BCHA has funding options that ARCH does not, and vice versa.

Mayor Davis will email to council an announcement where Sawtooth Board of Realtors is hosting an accredited course for realtors about community housing beginning Wednesday. This is another avenue to use and consider.

Davis summarized from hearing council's comments that the City of Hailey is willing to manage their own units for an interim period but that another entity should continue to manage the database.

Williamson added that BCHA funding was \$12,000 last year. And this year, Hailey agreed to cut this in half to enable dispatch funding. This action was one of the reasons for the discussions on future duties of BCHA.

Haemmerle clarified that this should be interim management but someone should take on this project and then collect comments.

*NB351 – Receipt of Planning and Zoning Commission's Findings of Fact and Conclusions of Law (Quigley Canyon Annexation) and overview of main issues related to*

*Council's future review of the Quigley Canyon Annexation application and proposed tentative public hearing schedule*

Martha Burke does not have any contact with this group; she wanted to disclose that in the past she has recused herself because of Stoney Burke's involvement with Quigley. Stoney is no longer affiliated with this process, so Burke is not recusing herself.

Robrahn will be contacting SPF to review the water balance which was submitted by the applicant prior to council hearing this item. The applicant is proposing an onsite system. This has implications on our wastewater system. Hellen is pursuing a Peer Review Draft of the Wastewater Facility needs assessment which will also tie to the Fiscal Impact Study. Staff recommends that they be allowed to proceed with conversations with the Blaine County Recreation District to formulate options to present to council. Brown and Burke agreed to give Robrahn the okay to have these discussions. Staff would like to have the blessing from council to go ahead with drafting the RFP. They want to look at the fiscal impact study, including a cost benefit analysis, analysis of proposal, and analysis of proposed amenities and development impact.

Robrahn discussed timelines with council, 2 meetings for information gathering. Then have a couple meetings dedicated to public comment and the Peer Review. The Planning and Zoning commission held a total of 9 meetings. Robrahn suggests scheduling special meetings to limit the discussion to a few topics per meeting.

Mayor Davis, Keirn and Haemmerle would like to see these studies completed before holding council's meetings.

Williamson stated that the fiscal impact study will take a long time – the Cutter's study took 3 months to complete.

Robrahn suggests the same groupings as they conducted with the Planning and Zoning commission. Robrahn would like to discuss water first. The meeting topics seemed to work well for the Planning and Zoning commission. They did limit the meetings to 2 hours, and allowed for brief public comments for all meetings.

If council wants to wait to have the studies completed, then we are looking at January before starting the public meetings. Council was in agreement with this proposal. Haemmerle wants to make sure that the information is disseminated to the applicant and citizens so they are able to review the documents.

Williamson proposed starting some meetings before having the fiscal impact study completed so as to not delay the other discussions.

Robrahn suggested starting with an overview, information gatherings, and public comments in November and December. And then not have too much time between these meetings and the fiscal impact study meeting.

*NB 352 – Discussion of Creation of Sustainable Planning and Building Ad Hoc Advisory Committee*

Mariel Platt asked that the council authorize the building of a Sustainable Ad Hoc Advisory Committee; noting that this committee is temporary.

Mayor Davis is for the creation of this committee to help guide us.

Haemmerle asked if the purpose of this committee would be for new construction. Platt answered that yes, it would be. However, there might be other applications.

**Council agrees to move forward with forming this committee.**

*NB353 – Discussion of proposed Resolution 2008-15 endorsing the U.S. Public Interest Research Group’s federal transportation funding reform, known as “21<sup>st</sup> Century Transportation for America”*

Brown recused herself from this conversation. Her employer has asked that she not involve herself in any national level discussions.

Platt briefed council that this is a Federal funding reform focusing on long term solutions versus short term solutions.

This proposes that money be earmarked for repairs rather than new highway construction and also light rail system.

Mayor Davis, Keirn is okay with this proposal.

**Motion to approve resolution 2008-15 and authorize the Mayor to sign made by Keirn, seconded by Burke; motion passed unanimously.**

**EXECUTIVE SESSION:**

**Brown moves to go into Executive Session to discuss possible pending litigation IC 67-2345.f/j by Brown at 7:40 pm, seconded by Keirn, motion passed unanimously by roll call vote.**

Council returns from Executive Session at 8:03 pm.

**WORKSHOP:**

Mayor Davis asked for comments on how the city should be involved in the airport relocation as Tom Bowman is asking for the council’s input.

Burke spoke with Rick Baird at the airport, very good discussion. Burke wants council to consider what a joint powers agreement might look like for the new airport. But wants public input before any decisions are made.

When they met with the BLM they presented a white paper presentation with four options for acquiring BLM land. The FAA probably will not buy into grants and leases. The airport authority will meet to discuss what makes sense.

Council hopes that the airport authority initiates this process and that in the future months that council can discuss further. Brown suspects other cities in the area will want a seat at the table during these discussions. Burke adds that half of the assets of the \$30 something million belongs to the city of Hailey and former Mayor McBryant is afraid that some unknowing Mayor in the future will relinquish these assets.

Mayor Davis will contact Tom Bowman with council's sentiments.

**With no additional comments, Mayor Davis adjourns the meeting at 8:16 pm**

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Rick Davis, Mayor

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Mary Cone, City Clerk