

COUNCIL MEMBERS:

SHAWN BARIGAR	DON HALL	SUZANNE HAWKINS	GREGORY LANTING	JIM MUNN, JR.	REBECCA MILLS SOJKA	CHRIS TALKINGTON
<i>Vice Mayor</i>			<i>Mayor</i>			



AMENDED MINUTES
Meeting of the Twin Falls City Council
Tuesday, November 12, 2013
City Council Chambers
305 3rd Avenue East -Twin Falls, Idaho

5:00 P.M.

PLEDGE OF ALLEGIANCE TO THE FLAG
CONFIRMATION OF QUORUM
INTRODUCTION OF STAFF
CONSIDERATION OF THE AMENDMENTS TO THE AGENDA

PROCLAMATIONS:

November 21, 2013 - Grief Awareness Day – Request made by Revis Turner.

National Hospice and Palliative Care Month – Request made by Tom Mikesell.

AGENDA ITEMS	Purpose	By:
I. <u>CONSENT CALENDAR:</u>		
1. Consideration of a request to approve the accounts payable for November 5 – 12, 2013, total: \$280,759.42 and November 7, 2013, payroll, total: \$117,321.98.	Action	Sharon Bryan
2. Consideration of a request to approve the October 28, 2013, City Council Minutes.	Action	Leila A. Sanchez
3. Consideration of a request to approve the Findings of Fact, Conclusions of Law, and Decision for the Final Plat of the Dunthorn Subdivision.	Action	Mitchel Humble
4. Consideration of a request for the approval of the Annual Festival of Lights Parade to be held on Friday, December 6, 2013.	Action	Sgt. Ryan Howe
5. Consideration of a request to approve the 23rd Annual Christmas in the Night Time Sky Event to be held at 2862 Addison Avenue East on November 29, 2013.	Action	Sgt. Ryan Howe
II. <u>ITEMS FOR CONSIDERATION:</u>		
1. Consideration of a request to acquire property for the purpose of placing a water storage reservoir at 183 Hankins Road.	Action	Jacqueline Fields
2. Discussion and possible direction regarding the Zoning Ordinance Amendment Committee's progress on drafting an amendment to City Code 10-4-19: Canyon Rims Overlay District.	Discussion/ Direction	Mitchel Humble
3. Discussion on the Idaho Open Meeting Law and possible action on a resolution (attached) requiring meetings of committees, subcommittees, and work groups of the City to publicly notice and post their meetings, keep minutes, and open such meetings to the public except as otherwise provided in the Open Meeting Law.	Discussion/ Possible Action	Rebecca Mills Sojka
4. Public input and/or items from the City Manager and City Council.		
III. <u>ADVISORY BOARD REPORTS/ANNOUNCEMENTS:</u>		
IV. <u>PUBLIC HEARINGS:</u> None		
V. <u>ADJOURNMENT:</u>		

Any person(s) needing special accommodations to participate in the above noticed meeting could contact Leila Sanchez at (208) 735-7287 at least two working days before the meeting. Si desea esta información en español, llame Leila Sanchez (208)735-7287.

Present: Shawn Barigar, Don Hall, Suzanne Hawkins, Greg Lanting, Rebecca Mill Sojka, Chris Talkington

Absent: Jim Munn

Staff Present: City Manager Travis Rothweiler, City Attorney Fritz Wonderlich, Community Development Director Mitchel Humble, City Engineer Jacqueline Fields, Sgt. Ryan Howe, Public Information Officer Josh Palmer, Assistant to the City Manager Mike Williams, Deputy City Clerk/Recording Secretary Leila A. Sanchez

Mayor Lanting called the meeting to order at 5:00 P.M. He then invited all present, who wished to, to recite the pledge of Allegiance to the Flag. A quorum was present. Mayor Lanting introduced staff.

CONSIDERATION OF THE AMENDMENTS TO THE AGENDA: None

PROCLAMATIONS:

-November 21, 2013 - Grief Awareness Day – Request made by Revis Turner.

Councilperson Hawkins read the proclamation. Mayor Lanting presented it to Revis Turner.

-National Hospice and Palliative Care Month – Request made by Tom Mikesell.

Councilperson Talkington read the proclamation. Mayor Lanting presented it to Revis Turner.

AGENDA ITEMS

I. CONSENT CALENDAR:

1. Consideration of a request to approve the accounts payable for November 5 – 12, 2013, total: \$280,759.42 and November 7, 2013, payroll, total: \$117,321.98.
2. Consideration of a request to approve the October 28, 2013, City Council Minutes.
3. Consideration of a request to approve the Findings of Fact, Conclusions of Law, and Decision for the Final Plat of the Dunthorn Subdivision.
4. Consideration of a request for the approval of the Annual Festival of Lights Parade to be held on Friday, December 6, 2013.
5. Consideration of a request to approve the 23rd Annual Christmas in the Night Time Sky Event to be held at 2862 Addison Avenue East on November 29, 2013.

MOTION:

Vice Mayor Hall made the motion to approve the Consent Calendar as presented. The motion was seconded by Councilperson Hawkins and roll call vote showed all members present voted in favor of the motion. Approved 7 to 0.

II. ITEMS FOR CONSIDERATION:

1. Consideration of a request to acquire property for the purpose of placing a water storage reservoir at 183 Hankins Road.

City Engineer Fields explained the request.

Council discussion followed.

- Delivery service area
- Cost of property
- Operation of the system

City Engineer Fields stated that the areas served are Bethel Temple to the north, Orchard on the south side, and area between Eastland and eastern edge of water service area.

Councilperson Mills Sojka stated that the cost of the storage tank is over budget of \$100,000. The property is almost \$100,000 per acre. She asked staff to explain the significant cost of the property and to describe the property.

City Manager Rothweiler discussed the cost. The property has a commercial designation making it a higher value. The asking price was \$1.6 million dollars for one parcel. The request is to acquire a portion of the parcel. This is \$100,000 over budget. The water fund has unrestricted cash available.

Councilperson Mills Sojka stated that she knows this is an important purchase and wanted to make sure the City is being diligent so the taxpayers aren't getting fleeced in the process.

City Engineer Fields stated that this tank will hold 22 million gallons for storage.

- 5 million gallon tank
- Participation from new industry

City Manager Rothweiler stated that the estimated cost for the tank is \$ 7.3 million dollars. The City's contribution is \$3.5 million. The balance will come through tax increment financing, Cliff Bar and Area 4-1 URA Agency.

MOTION:

Councilperson Barigar made the motion to approve the request to acquire property for the purpose of placing a water storage reservoir at 183 Hankins Road in the amount not to exceed \$450,000. The motion was seconded by Councilperson Talkington and roll call vote showed all members present voted in favor of the motion. Approved 6 to 0.

2. Discussion and possible direction regarding the Zoning Ordinance Amendment Committee's progress on drafting an amendment to City Code 10-4-19: Canyon Rims Overlay District.

Community Development Director Humble explained the request. The Zoning Ordinance Amendment Committee (ZOAC) recommends that no code amendment is necessary regarding the Canyon Rim Overlay District.

Council discussion followed.

- Rock Creek potential
- Committee members
- Setbacks at Rock Creek at 50' and the Snake River Canyon at 50' with geological survey.

Community Development Director Humble stated the Canyon Rim Overlay District ordinance applies to commercial property.

Cheri Condie, Barbara Beck, and Kathy McMillan, Concerned Citizens Committee, participated in the ZOAC's conversations.

Community Development Director Humble stated he believes that the Rock Creek setback of 50' and the Snake River Canyon setback of 50' with a geological survey are due to rim stability.

City Attorney Wonderlich stated that his recollection from the hearing is that the Rock Creek Canyon setback of 50' is due to the size of the canyon and there being less impact.

Councilperson Barigar stated the goals of the setback were to limit the visibility of the rim from the canyon.

Tom Frank, Chairman of the Planning & Zoning Commission, stated that the Rock Creek Canyon rim was of particular concern to him; also discussed how different projects come into the community.

Kevin Dane, Twin Falls, Idaho, spoke in favor of the request.

Kathy McMillan spoke against the request. She spoke on the retail design standard.

Councilperson Talkington stated that he served on ZOAC for a year and agrees that the Canyon Rim Overlay has been a controversial and a non-ending problem without an apparent solution.

Kevin Dane stated that Canyon Rim Overlay is working well. Most of the public interest in the last few years has increased. The main priority for the Canyon Rim Overlay District ordinance was the Snake River Canyon.

Councilperson Mills Sojka stated that she is not satisfied with doing nothing with the Canyon Rim Overlay District ordinance. She stated that the public has voiced opposition and she supports recommendations made by the Concerned Citizens Committee. The Strategic Plan and the Comprehensive Plan stated the need to protect canyon rim environments.

Vice Mayor Hall stated he served on the ZOAC and stated that the public was involved in the process.

Councilperson Barigar stated that creating a CRO District for every possible eventuality, that may or may not happen, may be more detrimental than the PUD. The City's process of evaluating the CRO District ordinance went through a process where public input was received and considered.

Mayor Lanting stated that when the Canyon West PUD was considered he made the recommendation of turning the proposed building around but was voted down. During the PUD process, he asked for and received assurances relating to berming and trees. He is in favor of keeping the Canyon Rim Overlay District ordinance as it stands.

Councilperson Talkington stated that Councilperson Mills Sojka referred to ZOAC as a closed meeting and was sure she didn't mean that the committee was doing anything in violation of the Idaho Meeting Laws. The meetings were publicized. He stated that he would not participate in illegal meetings.

Councilperson Mills Sojka stated that she was not saying the meeting was illegal. The public was not invited or noticed.

No motion on the floor.

3. Discussion on the Idaho Open Meeting Law and possible action on a resolution (attached) requiring meetings of committees, subcommittees, and work groups of the City to publicly notice and post their meetings, keep minutes, and open such meetings to the public except as otherwise provided in the Open Meeting Law.

Councilperson Mills Sojka explained the request.

Idaho Attorney General Lawrence Wasden created a pamphlet that clarifies the Open Meeting Laws and assists in their proper implementation. She referred to Idaho Code 67-2340 and read, "The people of the state of Idaho in creating the instruments of government that serve them, do not yield their sovereignty to the agencies so created. Therefore, the legislature finds and declares that it is the policy of this state that the formation of public policy is public business and shall not be conducted in secret." She also stated that the law states, "All meetings of the governing body of a public agency shall be open to the public and all persons shall be permitted to attend any meetings except as otherwise provided by this act should be able to attend any meetings as provided by this act."

She stated that the City should be noticing and letting the citizens know when preliminary discussions are happening. All the definitions are laid out in the statute and those definitions supersede the common definitions. In the Idaho Open Meeting Law Manual the definition of deliberation is "the receipt or exchange of information or opinion relating to a decision...", and even the receipt of information relating to a decision that is a measure on which the governing body will have to vote amounts to deliberation, therefore triggers the definition and requirements of meeting, under the Open Meeting Law.

She stated that in several court cases it has been found that you really can't separate deliberation from decision. So if we deliberate in a meeting that is not necessarily noticed or public or not everyone is invited to attend, if there are elected officials and commission members in attendance, they are still participating in the process of making the decision. She referred to the Idaho Open Meeting Law Manual and stated, "The California Court of Appeals discussed the dual facets of deliberation in Sacramento Newspaper Guild v. Sacramento County Board of Supervisors and found that the California's open meeting law declares the law's intent that deliberation as well as action occur openly and publicly. Recognition of deliberation and action as dual components that the meeting concept cannot be split of and confined to one component only, but rather comprehends both and either. "

As seen tonight, committees are deliberating and making a recommendation to the Council. A similar decision was reached from the Florida Supreme Court, "It is the law's intent that any meetings, relating to any matter on which foreseeable action will be taken, occur opening and publicly." The Attorney General goes further by saying, "The requirement that the Open Meeting Law must be complied with whenever a quorum of the members of a governing meets to deliberate or to make a decision should not be evaded by holding small meetings with less than a quorum present or by having a go-between contact each of the governing body members to ascertain his/her sentiment." The advice is clear to error on the side of openness.

The City Council has done nothing illegal and has followed the letter of the law. The two details that make these meetings legal is a quorum of the Council must be present and the committee is created by some legislative act of the Council. Deliberation is important to open up to the public so that some Councilmembers aren't receiving different information from other councilmembers. Information received during deliberations no doubt affects the ultimate decisions of the Council.

She would rather not have the Council embrace these few small details that hinge on the fact that we are doing a legal process, but would prefer the Council embrace the intent of the Open Meeting Law to notice and post agendas and invite the public to the preliminary discussion and conversation. At a Planning & Zoning Commission training discussion was made on how someone becomes involved in the front end if not chosen for the ZOAC and a whole idea might get vetted out by a committee and the result may not be as good as if you would have included more input in the process.

City Attorney Wonderlich brought out that in our form of government the Mayor does not have that authority to create committees on his or her own but it should be an act of the Council. The creation of committee by the Council is subject to the requirement of Open Meeting Laws. He also stated that it is not illegal for the Mayor to create a committee.

The resolution basically summarizes the points made by Councilperson Mills Sojka and points out specific places where the Open Meeting Law and the Idaho Attorney General advises to error on the side of openness in regards to committee meetings.

MOTION:

Councilperson Mills Sojka made the motion to approve Resolution 1909. The motion was seconded by Councilperson Talkington.

Council discussion followed.

-Exemptions to the Idaho Meeting Laws

Mayor Lanting stated that adoption of the resolution would result in hiring one more staff member. The staff member would need to post the meeting notice, develop the agenda, take the minutes, and transcribe the minutes. In addition, two thirds of the committees listed in the Times News were formed by him to determine who to appoint to the various commissions and committees, such as the Historical Preservation Commission, Parks & Recreation Commission, and Tree Commission. According to the proposed Resolution, the meetings will be conducted according to the Open Meeting Laws. To eliminate the need to hire a staff member he suggested allowing only one Councilmember to serve on a committee rather than the two proposed in the Resolution. If the proposed Resolution fails, he will guarantee that there will no longer be more than two Councilmembers serving on a committee and the meetings will be posted. He did state that he does not believe that it would be beneficial to the City to open meetings on negotiation contracts.

Vice Mayor Hall stated that conversation was made on how to solicit more community input prior to the Attorney General's workshop. Elected officials always need to be held accountable; however, in this situation the Council is going to the extreme. There are better ways to improve upon public input and noticing the public of the meetings. The Open Meeting Laws have been followed with good faith and Council will continue to follow with good faith. He stated he is not in support of the resolution.

Councilperson Hawkins stated she echoed the Mayor's and Vice Mayor Hall's comments. The City of Twin Falls does an excellent job notifying and posting meetings. She stated her concern that citizens who wish to volunteer their time to serve on a commission or committee may not do so because the process is open to the public. She does not agree that having two Councilmembers serving on a commission or committee changes the way Councilmembers deliberate. The public has placed trust in Councilmembers to take care of the daily business. Councilmembers are always available to the public.

Councilperson Barigar stated that he is in support of transparency and openness in government and as Councilperson Mills Sojka stated the Council is not breaking the law. He stated his concern on how the issue has come up and it feels like the Council is being accused of breaking the law, not only from peers but from some of the perceptions that have been portrayed in the community. The Council works hard to do the work that they have been elected to do. He will not support the resolution because it appears to be a restatement of the state code that already exists and he believes the resolution does not have any substance. He stated he is open to modifying the way work groups are conducted. He is not in favor of hiring staff to push paper because it does not serve the public's need. The ZOAC may a good example that may need to be opened up to the public. He does not support doing community recommendation work groups in a public forum.

Councilperson Mills Sojka spoke on the implementation and impact of the resolution and discussed the intent of the resolution. She believes the workload would be minimal for staff.

City Manager Rothweiler stated that if the resolution should pass staff will implement the resolution. If it is simple as putting meeting notices on the website this would not be hard to accomplish. If staff are required to take meeting minutes and prepare agenda statements this would require additional resources besides placing them on the website. Should the resolution pass, staff would like clear direction on what implementation and process looks like so staff can carry the policy out. The resolution requires more than posting on the existing calendar.

Councilperson Mills Sojka clarified her intent on written minutes and posting of meetings.

Discussion followed.

-Placing meetings on Website

Councilperson Talkington recommended setting a maximum of two Councilmembers to serve on a committee or commission and for this to be effective in January.

City Attorney Wonderlich explained the reasons for Executive Sessions and stated that the Council can do more than what the law requires.

Councilperson Barigar asked Councilperson Mills Sojka of the list of work groups that was compiled for the Times News which should be open.

Councilperson Mills Sojka believes that all work groups should be open.

ROLL CALL VOTE ON THE MAIN MOTION:

Roll call vote showed Councilpersons Mills Sojka and Talkington voted in favor of the motion. Councilperson Barigar, Hawkins, Hall, Lanting voted against the motion. Failed 2 to 4.

Mayor Lanting stated that though he agrees with City Attorney Wonderlich that Council is not breaking any laws, there may be committees that would be appropriate to open to the public and to notice them whether or not detailed minutes are kept. He explained the process of appointing members to committees. He stated that he would like to see the ZOAC and Sign committees opened. Of the committees he has formed where there are two more Councilmembers with the exception of contract negotiations, economic development, appointments to commissions and committees, he would recommend minutes be taken but not transcribed unless otherwise requested, recorded, media notification, placed on the City calendar. He stated that conversation should be made on whether or not to open committees.

Council discussion followed.

-No more than two Councilpersons on any given committee

-Discuss opening ZOAC

City Manager Rothweiler referred to Councilperson Mills Sojka stating that he has the ability to create committees to help assist in the execution of his duties; therefore, he will ask the Mayor to appoint the number of members to a committee to comply with the spirit of what is being discussed. Staff wants to ensure we follow the same values that are set by the entirety of the Council.

Mayor Lanting volunteered to not attend the ZOAC meetings.

4. Public input and/or items from the City Manager and City Council.

Max Newlin, resident of Twin Falls, commented that he is now utilizing the City's website.

Sarah Taylor asked why the URA Downtown Infrastructure meeting was not on the committee list. She stated that three Councilmembers serve on the committee.

Mayor Lanting stated that the URA is not a committee of the City Council.

City Manager Rothweiler stated that the City has a relationship with Urban Renewal Agency by contract. The Urban Renewal Agency by Idaho Code is a separate and distinct entity. The Urban Renewal Agency has a whole series of different operating guidelines and procedures. The only connection it has with the City, other than our contract for services that we provide, is that the seven members of the City Council vote on membership of Urban Renewal. The Urban Renewal Agency serves as an independent entity. Because Sarah Taylor is a URA member, she may want to drive a conversation with the Urban Renewal regarding tonight's discussion.

Mayor Lanting stated that three City Council members were added to the URA Downtown Infrastructure meeting at the discretion of the URA Board.

City Manager Rothweiler stated that he understands that Council is directing staff to limit no more than two members of the Council or a commission to serve on a committee or sub-committee.

Vice Mayor Hall and Councilperson Talkington clarified this would only apply to elected officials.

Councilperson Mills Sojka felt that this should extend to committees and commissions as well.

City Manager Rothweiler stated that staff will place meetings on the City calendar and website, and public service announcements will be made to reach out to the public. Meetings will be recorded either in the Council Chambers or by miniature tape recordings.

III. ADVISORY BOARD REPORTS/ANNOUNCEMENTS:

City Manager Rothweiler stated that on November 21, 2013, at 4:00 p.m., at O'Leary Middle School, the City Council will hold a Public Forum meeting to hear presentations from interested parties that would like to utilize city owned property as a jump site for the Evel Knievel commemoration. The public will have the opportunity to provide comment and share thoughts and opinions of the process.

Mayor Lanting stated that November 13, 2013, a Special Meeting will be held at 1:00 p.m. to conduct an Executive Session.

VI. PUBLIC HEARINGS: None

V. ADJOURNMENT: The meeting adjourned at 7:25 p.m. Leila A. Sanchez - Deputy City Clerk/Recording Secretary