

COUNCIL MEMBERS:

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



MINUTES
 Meeting of the Twin Falls City Council
Monday, April 23, 2012
 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: Arbor Day Proclamation

AGENDA ITEMS	Purpose	By:
I. <u>CONSENT CALENDAR:</u> 1. Consideration of accounts payable for April 17 - 23, 2012. 2. Consideration of the April 2, 2012, City Council Minutes. 3. Consideration of a request to adopt proposed Resolution 1883 to destroy semi permanent and temporary records. 4. Consideration of the adoption of the AMENDED C-1 PUD AGREEMENT #220-POLELINE COMMERCIAL PUD. 5. Consideration of the Final Plat of Poleline Commercial Subdivision-A PUD, 10.28 (+/-) acres consisting of 8 lots and located at 636 Poleline Road.	<u>Action</u>	<u>Staff Report</u> Sharon Bryan L. Sanchez Sharon Bryan Mitch Humble Mitch Humble
II. <u>ITEMS FOR CONSIDERATION:</u> 1. Presentation of the Annual Jim A. Mildon Traffic Safety Award to Jean and Ron Gray and Jamie and Stepheni Gray. 2. Consideration of a request to approve the first Magic Valley Beer Festival to be held at the Twin Falls City Park on Saturday, August 18 ,2012, from 12:00 P.M. through 5:00 P.M. 3. Consideration of a request to adopt a Naming Policy for the City of Twin Falls. 4. To discuss and determine whether there may be significant adverse impact as a result of the Planning & Zoning Commission's decision on the preliminary plat for the Canyon Park Amended Subdivision, and if so, whether to schedule a Council review of that decision at a future public meeting. 5. Public input and/or items from the City Manager and City Council.	Presentation Action Action Discussion/ Possible Action	Dennis Pullin Dennis Pullin Dennis Bowyer Mitch Humble
III. <u>ADVISORY BOARD REPORTS/ANNOUNCEMENTS:</u>		
IV. <u>PUBLIC HEARINGS:</u> 6:00 - None		
V. <u>ADJOURNMENT:</u>		

**Any person(s) needing special accommodations to participate in the above noticed meeting should contact Leila Sanchez at (208) 735-7287 at least two working days before the meeting.*

Present: Shawn Barigar, Lance Clow, Gregory Lanting, Jim Munn, Rebecca Mills Sojka, Chris Talkington, Don Hall

Absent: None

City Staff: City Manager Travis Rothweiler, City Attorney Fritz Wonderlich, Community Development Director Mitch Humble, Sergeant Dennis Pullin, Deputy City Clerk Sharon Bryan, 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 with him. Mayor Lanting introduced staff.

CONSIDERATION OF THE AMENDMENTS TO THE AGENDA: None.

PROCLAMATIONS: Arbor Day Proclamation

Mayor Lanting presented the proclamation to Parks & Recreation Director Dennis Bowyer.

Arbor Day will be celebrated on April 27, 2012, at 4:00 P.M. at the Ascension Soccer Fields, Friday.

AGENDA ITEMS

I. CONSENT CALENDAR:

1. Consideration of accounts payable for April 17 - 23, 2012, total: \$598,503.49, Prepay April 24, 2012, \$26,561.25
2. Consideration of the April 2, 2012, City Council Minutes.
3. Consideration of a request to adopt proposed Resolution 1883 to destroy semi permanent and temporary records.
4. Consideration of the adoption of the AMENDED C-1 PUD AGREEMENT #220-POLELINE COMMERCIAL PUD.
5. Consideration of the Final Plat of Poleline Commercial Subdivision-A PUD, 10.28 (+/-) acres consisting of 8 lots and located at 636 Poleline Road.

MOTION:

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

II. ITEMS FOR CONSIDERATION:

1. Presentation of the Annual Jim A. Mildon Traffic Safety Award to Jean and Ron Gray and Jamie and Stepheni Gray.

Staff Sergeant Pullin explained the request.

Mayor Lanting and Vice Mayor Hall presented Jean and Ron Gray the Annual Jim A. Mildon Traffic Safety Award for their dedication to the field of traffic safety.

2. Consideration of a request to approve the first Magic Valley Beer Festival to be held at the Twin Falls City Park on Saturday, August 18, 2012, from 12:00 P.M. through 5:00 P.M.

Staff Sergeant Pullin explained the request.

Staff has recommended approval of the request and recommends that the on-duty Patrol Supervisor be given the authority to order the event organizers to mitigate the sound of amplified music.

Council discussion followed.

Shayne Carpenter, applicant, clarified the following:

- \$10 fee for a designated driver.
- Anticipate selling 1,000 tickets.

MOTION:

Councilperson Munn made a motion to approve the first Magic Valley Beer Festival to be held at the Twin Falls City Park on Saturday, August 18, 2012, from 12:00 P.M. through 5:00 P.M., with the provisions and stipulations described by Staff Sergeant Pullin. The motion was seconded by Councilperson Clow. Roll call vote showed Councilperson Munn, Talkington, Barigar, Clow, Hall and Lanting. Approved 6 to 0, with one abstention.

1. Consideration of a request to adopt a Naming Policy for the City of Twin Falls.

Parks & Recreation Director Bowyer explained the request.

The Parks & Recreation Commission recommends that the City Council adopt the proposed naming policy for the City of Twin Falls. Staff concurs with the recommendation.

Council discussion followed.

Councilperson Mills Sojka referred to item 4. "Historical figure, or an individual, family, or organization that make a significant land, monetary, or service contribution to the acquisition of property, park system, or the community in general." She stated that it may be a good idea to have a general working term of the word "significant."

She also referred to the following, "Commission will forward their recommendation to City Council for their consideration." She stated that she would like to take public input at that time.

Councilperson Talkington asked that under the proposal, if the City Council would be allowed renaming.

Parks & Recreation Director Bowyer stated that the City Council could waive any requirements or procedures in the policy. If the Council chooses to rename a street the Council can initiate the process.

Councilperson Clow asked if the Council should limit to the Parks & Recreation Commission an open window to apply for changes.

Parks & Recreation Director Bowyer stated that this was not discussed but this can be considered as an option.

Vice Mayor Hall stated that in regards to Councilperson Mills Sojka's suggestion to have the word "significant" defined, he likes the ability to look at something and be somewhat objective as to what is significant, without having a monetary amount or percentage amount. The City has been very conservative as a community in naming or re-naming of park and recreational facilities.

MOTION:

Councilperson Talkington made the motion to adopt the naming policy as presented. The motion was seconded by Vice Mayor Hall and roll call vote showed all members present voted in favor of the motion. Approved 7 to 0.

2. To discuss and determine whether there may be significant adverse impact as a result of the Planning & Zoning Commission's decision on the preliminary plat for the Canyon Park Amended Subdivision, and if so, whether to schedule a Council review of that decision at a future public meeting.

City Attorney Wonderlich explained the process. He explained that he has one recollection of an appeal of a preliminary plat to the Council. This was for a large apartment development off of Kimberly Road, in which access was through a street to the south. The Planning & Zoning Commission voted against the preliminary plat.

The Council may be reviewing the decision of the Planning & Zoning Commission. The Council has delegated their authority to the Planning & Zoning Commission to act on their behalf in certain circumstances. If the Council disagrees with a Planning & Zoning Commission decision, the Council has the right to bring it back to themselves and decide for themselves. An applicant would have the right to appeal to the Council if they did not agree with a decision made by the Planning & Zoning Commission. The Council's decision is whether or not to review the decision of the Planning & Zoning Commission.

If an applicant disagrees with the decision, the applicant has standing because they have a personal interest and economic interest in the outcome. Adjoining property owners would have standing, but someone who is just interested in the general development of the City would not have standing. They do not have a personal interest or economic interest in that decision. Because this affects a particular parcel of land, this is a quasi judicial decision, meaning to act like a judge and not like a legislator. This is quasi judicial because the applicant has an economic interest in the outcome. The applicant has due process rights. Council has received emails, in which legal counsel has advised Council not to read emails or letters. In reading the emails or letters, the Council would be violating their quasi judicial function and violating the rights of the applicant.

The request for the Council is whether the decision of the approval of the preliminary plat should be reviewed. This is not a debate as to whether the development is good or bad. This is a process decision. The discussion tonight is whether or not the preliminary plat

has significant adverse impact on the City, and if so, does the Council want to proceed with a hearing. If the Council votes yes on the adverse impact on the City and to have a public hearing, staff will schedule a public meeting so contact can be made with everyone who initially received notification of the preliminary plat. This will be the time to provide information to the Council for consideration.

Vice Mayor Hall stated that Community Development Director Humble was instructed to respond to all correspondence.

Councilperson Talkington asked for clarification on the process. He asked if this is for a motion to review the Planning & Zoning Commission decision of the preliminary plat and has nothing to do with the substance at this time.

City Attorney Wonderlich stated that this is associated with a finding or determination that there may significant adverse impact as a result of the action of the Planning & Zoning Commission.

Councilperson Clow asked if the *adverse finding* means that the Planning & Zoning Commission made a mistake by not following zoning rules.

City Attorney Wonderlich stated that *adverse finding* does not mean a finding of error but a disagreement of their policy and decision. In the last preliminary plat appeal brought before the Council, the Council upheld the Planning & Zoning Commission decision. The plat had a negative adverse impact of adjoining properties to try to funnel traffic through a street that was designed for local traffic.

MOTION:

Councilperson Talkington made a motion to review the Planning & Zoning Commission's preliminary plat decision concerning the Canyon Park Amended Subdivision. The motion was seconded by Councilperson Mills Sojka.

Council discussion followed.

Councilperson Barigar asked that whoever is in support of the motion would define the *significant adverse impact*.

Councilperson Mills Sojka stated that at the public hearing the public stated their concerns regarding safety issues and citizens felt that the City is violating the Canyon Rim Overlay code.

Councilperson Talkington stated that there was a lack of in-depth questioning from the Planning & Zoning Commission regarding traffic management and the geologic issue. He stated that he is not sure if the geological issue as specified by the City is appropriate.

Councilperson Clow stated that in regards to the safety issue with the geologic study he has some concern. The project is outside the 100' setback requirement which developers have been following for the past 17 years. Inside the 100' setback a geological study is required to verify the safety of their buildings. The properties along the rim that are within the 100' setback haven't been deemed as a safety issue. The development's setback is necessary because the area is needed between the buildings and the rim for access and mobility of traffic around their facilities. The geological issue does not appear to be something that plays into the decision.

Councilperson Mills Sojka, liaison to the Planning & Zoning Commission, stated that she attended the preliminary plat hearing and in Section B of the Canyon Rim Overlay code it states, "To protect the view and create a unique environment on the canyon rim." In the April 10, 2012, Planning & Zoning Commission meeting minutes, questions were raised as to who designed the plan and criteria. The answer was basically major users and marketers. She stated that she wants to affirm that she is not violating the code.

Councilperson Clow stated that he and Councilperson Talkington were involved in the approval of the Canyon Rim Overlay. As he recalled, the statement "protect the views" was from the bottom of the canyon up and out. It wasn't from the buildings down.

Councilperson Mills Sojka stated the code as written doesn't give the background information and is open to interpretation.

Roll call vote on the motion showed Councilpersons Lanting, Mills Sojka, Talkington voted in favor of the motion. Councilpersons Barigar, Clow, Hall and Munn voted against the motion. Failed 3 to 4.

City Attorney Wonderlich stated the final plat, the ordinance on rezoning the property to the PUD, PUD agreement and road maintenance agreement will be brought before the City Council at a future meeting.

Vice Mayor Lanting requested that the minutes be provided from where the PUD was first originally designed and the promises made by the developer at that time.

Councilperson Mills Sojka asked if when the PUD agreement is brought before Council will the public be able to comment.

Community Development Director Humble stated that public comment is at the discretion of the Mayor.

Councilperson Clow stated that in the mid-90's, the City established a moratorium on the development on the canyon rim to do a study on the canyon rim. He suggested that the report be shared with the Council and placed on the City's website. The report will show how we went from no regulations on the Canyon Rim to where we are today and why the 100' setback was established in City Code.

Councilperson Talkington stated that he has heard unconfirmed reports that there is some evidence of geologic instability in existing houses on either side of the Perrine Bridge

Councilperson Barigar stated that if there is true imminent danger within the 100' of the rim this should be explored. He does not believe the concern should be explored with the development.

Councilperson Munn asked if there are geological studies that were done in the mid-90's or in the recent past that can be reviewed by staff or by Council.

Community Development Director Humble stated that the City does have generic studies and specific studies for specific properties where the developer was required for a building to go in less than 100' to the rim. In every case the studies were reviewed and approved by the City Engineer.

City Manager Rothweiler stated that Gerald Martens, who is the engineer on record, shared that he does have a study in regards to the property and staff will make it available upon receipt for the Council's review.

Councilperson Talkington asked who paid for the geologic survey.

City Manager Rothweiler stated that the survey was paid for by the landowner during the hotel study.

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

Matt Vandernoot of Twin Falls asked how a citizen speaks to a representative, as part of a constituency, on an issue they will be judging prior to the citizen's ability to speak to them about an issue.

Mayor Lanting stated that he will allow public input on the development's final plat and PUD.

Councilperson Barigar stated that in general there is a due process. The Planning & Zoning Commission and the City Council hold public hearings where public testimony is received.

Councilperson Mills Sojka asked if there is a preliminary date on the PUD and final plat.

City Manager Rothweiler stated that staff has not scheduled a time for the PUD and final plat. He stated that staff will notify the public of when they will be placed on the agenda.

Patty Coffman, 2171 Selway Street, asked if the Perrine Bridge project is on tonight's agenda and if the citizens of Twin Falls will be allowed input.

Mayor Lanting clarified that the discussion at this meeting was regarding the preliminary plat of the Canyon Park Amended Subdivision. He stated he will allow public input on the PUD and final plat.

Cheri Condie asked City Attorney Wonderlich what part of the code indicates that City Code does not allow a citizen to appeal a final decision, what part of the code interprets a citizen has to have standing with an economic interest among the community, and she would like to know the exact steps an affected person would take to start the mediation process.

City Attorney Wonderlich stated that the code does not have an appeal process for a preliminary plat; therefore, the City reverts back to constitutional law. It is an economic outcome of the decision that allows the due process right, otherwise you are an interested citizen. The City is required to include the mediation provision by the Local Use Planning Act. It applies to an affected person, so it

comes to defining who is an affected person. City Code 10-17-5 (A) states that mediation can be requested by the applicant or by an affected person. An affected person is not necessarily only the applicant, it is anyone else who can argue that their property values are affected by the action of the Council.

Mayor Hall asked the City Attorney what recourse a person has if they don't agree with his interpretation of an affected person. Will they be able to sue the City?

City Attorney Wonderlich stated that he didn't know of any recourse. A person would have to state the claim. City Code makes a presumption that anyone living within 300' of a special use, for example, is an affected person. In regards to the appeal of the preliminary plat for the high density apartments, someone could live beyond the 300' and because of the potential of hundreds of vehicles coming back and forth in front of the house; this would be an affected person.

Councilperson Talkington stated that he has been an advocate of getting rid of downtown parking meters, but received a setback when attending the City of Albuquerque's 306th birthday, and found they still have parking meters. He stated he is giving up the battle regarding meters.

Councilperson Clow read a letter stating his resignation from the Council effective the end of April. He will be taking on new responsibilities in the Idaho legislature.

Mayor Lanting explained the procedure to fill the seat.

-Interested individuals need to submit a letter of interest and a resume by 5:00 P.M. on April 30, 2012.

-To be considered, a candidate must be a "qualified elector."

-Interested individuals will be asked to appear before a selection committee on May 1, 2012, at 7:00 P.M. at the Council Chambers.

-Each candidate will give a 3 minute presentation and explain why he/she is interested in serving on the City Council.

-Select applicants may be asked to be interviewed by the committee on either May 3, 4, or 5.

-Full council consideration is scheduled to occur on May 7, 2012.

Councilpersons Mills Sojka and Munn stated their concern of giving the public only one week to apply.

Mayor Lanting explained that he would like to have to have the Councilperson on board by May 8, 2012. Many people have expressed interest the moment Councilperson Clow announced his resignation

III. ADVISORY BOARD REPORTS/ANNOUNCEMENTS:

IV. PUBLIC HEARINGS: 6:00 - None

V. ADJOURNMENT: The meeting adjourned at 6:31 P.M.

Leila A. Sanchez
Deputy City Clerk/Recording Secretary