

MINUTES

McCall City Council Regular Meeting August 14, 2008

Agenda

Call to Order and Roll Call
Executive Session
Public Hearing
Public Comment
Consent Agenda
Business Agenda
Council Work Session
Adjournment

CALL TO ORDER AND ROLL CALL

Mayor Kulesza called the regular meeting of the McCall City Council to order at 5:30 p.m. Council Member Bailey, Council Member Delaney, Mayor Kulesza, Council Member Scott, and Council Member Witte answered roll call. A quorum was present.

In addition to the Council Members, present for the Executive Session meeting were Lindley Kirkpatrick, City Manager and City Attorney Bill Nichols.

EXECUTIVE SESSION

Council Member Delaney moved to go into Executive Session for litigation pursuant to Idaho Code §67-2345(1)(f). Council Member Bailey seconded the motion and in a roll call vote, all members voted aye and the motion passed.

The meeting returned to regular session at 6:05 p.m.

PUBLIC HEARING

Mayor Kulesza led the audience in the Pledge of Allegiance at 6:05 p.m.

For the regular meeting also present were Eric McCormick, Golf Course Superintendent; Walt Eisenstein, Public Works Director; John Anderson, Airport Manager; Linda Stokes, Acting Treasurer; David Simmonds, Information Systems Manager; Cindy Blackman, Personnel Manager; Jerry Summers, Chief of Police; Brad Kraushaar, City Planner; Brenna Chaloupka, Acting City Clerk / Administrative Assistant; and BessieJo Wagner, Deputy City Clerk / Administrative Assistant.

AB 08-161 Public Hearing on Fiscal Year 2008 – 2009 Budget

Mr. Kirkpatrick gave a brief overview of the public hearing for the FY09 budget. Details have been gone over during work sessions; there are three unresolved issues with the proposed numbers that will have to be resolved at the meeting of August 28, 2008.

1. Amount to budget for McPaws
2. Amount to budget For the Upper Payette River Development group
3. Amount to budget in support of VARHA

Mayor Kulesza opened the public hearing at 6:11 p.m.

The questions and comments presented by the public were:

Amy Crookshanks – McPaws Director addressed the Council with the needs of the McPaws Animal Shelter. They are requesting less than last year, for the FY09 they are requesting \$87,126. McPaws does a lot of fundraising on their own and then assigns the remainder to the Jurisdictions that they serve, which is less that 50% of their operating budget.

Hearing no further comments, the public hearing for verbal comment was closed at 6:17 p.m. the Public Hearing for written comment will remain open until August 21, 2008.

AB 08-164 Fiscal Year 2007–2008 1st Budget Amendment

Mr. Kirkpatrick gave a brief overview of the 1st Budget Amendment. The purpose of the amendment is due surplus fund balances and the Wausau Judgment payoff. There is \$13,987,461 in additional revenue, broken down as follows:

1. \$100,000 from surplus fund balance from the streets fund and general fund
2. Tax anticipation note
3. Warrant to pay of the Wausau Judgments
4. Revenue Bonds from the sale and proceeds

The total budget amendment is greater than the \$13,987,461 is due to some of the funds being accounted for twice.

Mayor Kulesza opened the public hearing at 6:22 p.m.

Hearing no comments, the public hearing was closed at 6:23 p.m.

Council Member Scott moved to suspend the rules and read Ordinance 858 by title only, one time only. Council Member Bailey seconded the motion and in a roll call vote, all members voted aye and the motion passed.

Ordinance 858 was read one time only, by title only by Mrs. Wagner.

Council Member Bailey moved to adopt Ordinance 858 to amend the 2007-2008 Budget. Council Member Scott seconded the motion and in a roll call vote, all members voted aye and the motion passed.

AB 08-158 Code Amendment (CA-08-01): An update to the approval process for trash-enclosing structures.

Mr. Kraushaar addressed the council with an overview of the code amendment for trash-enclosures. The amendment is that the approval process for trash enclosures would no longer need to go through the planning and zoning process and would be replaced with administrative approval.

Council Member Witte asked who would be the administrator approving these structures. Mr. Kirkpatrick responded that it would be either the Community Development Director or his / her designee.

Mayor Kulesza opened the public hearing at 6:30 p.m.

Hearing no comments, the public hearing was closed at 6:31 p.m.

Council Member Scott moved to suspend the rules and read Ordinance 859 by title only, one time only. Council Member Witte seconded the motion and in a roll call vote, all members voted aye and the motion passed.

Ordinance 859 was read one time only, by title only by Mrs. Wagner.

Council Member Witte moved to adopt Ordinance 859 to amend Code (CA-08-01) updating the approval process for trash-enclosing structures. Council Member Delaney seconded the motion and in a roll call vote, all members voted aye and the motion passed.

AB 08-159 Code Amendment (CA-08-02): An update to the Scenic Route application procedure

Mr. Kraushaar addressed the Council with an over view of the Scenic Route application procedure code amendment. The intent is to separate significant applications from less significant applications and then clearly articulate the process that is required for both types of applications. Amendment would maintain the exceptions as it exists now.

Council Member Bailey asked why was the sign review removed. Mr. Kraushaar stated that this language would be redundant as the sign ordinance covers the process needed for a sign review.

Council Member Bailey asked why was Chapter 5 crossed out. Again Mr. Kraushaar stated that the language was redundant due to all decisions are able to be appealed. Council Member Bailey recommends that even though the language may be redundant from the administrative side Chapter 5 needs to stay as it is clarifying to the general public what the process is if they should disagree.

After some discussion Mr. Kirkpatrick recommends that at this time this amendment be tabled and have staff restructure the amendment, to revisit paragraph one and Chapter 5, and bring it back for Council's approval.

Mayor Kulesza opened the public hearing at 6:52 p.m.

Hearing no comments, the public hearing was closed at 6:53 p.m. Continue the public hearing at the August 28, 2008 Council Meeting.

PUBLIC COMMENT

Mayor Kulesza called for public comment at 6:53 p.m.

Hearing no comments, Mayor Kulesza closed the public comment at 6:54 p.m.

CONSENT AGENDA

Staff recommended approval of the following items:

- Minutes from July 24, 2008
Council requested that the minutes be resubmitted with changes and more details.

- Warrant Register printed on August 7, 2008
- Payroll Report for Period ending July 25, 2008
- AB 08-156 Alcohol Beverage Catering Permits
- AB 08-160 Application to Hang a Highway Banner - Tamarack Sport & Education Foundation 3rd Annual Benefit Golf Tournament

Council Member Delaney moved to approve the Consent Agenda with the exception of the minutes from July 24, 2008. Council Member Scott seconded the motion and in a voice vote, all members voted aye and the motion passed.

BUSINESS AGENDA

AB 08-162 Marina development between Legacy Park and Brown Park

Mr. Kirkpatrick gave a brief overview of the issue –

1. Does the 1995 MOU between the City of McCall and McCall Gas Station Inc. (MGSI) authorize MGSI to submit conditional use permit and design review applications for a new marina?
2. Does the 2007 Mile High Marina lease extension authorize Mile High Marina to submit conditional use permit and design review applications for an expanded marina?

The Council has two roles as land owner and regulator. For this issue the Council is to act as the land owner. The issue before the Council is - can an application be made to be considered.

Council Member Bailey had a comment on the memo Page 3 about the Tomlinson Dock, the status of this dock needs to be investigated and determined if it should be allowed to be located on public property. Mr. Kirkpatrick agreed that the question needs to be addressed however it is separate from the question before the Council now.

Mayor Kulesza asked for presentations from each of the applicants.

Debra Nelson, the attorney for Mile High Marina highlighted some items from their written testimony. She states that staff has communicated that this is a very complicated issue as the City of McCall is both the land owner and the regulator. She understands that prior to anyone being able to come forth with a land use application for use of the City's property, they must secure the City's permission to do so. By definition this permission is exclusive. This does not allow the City to weigh one project meeting the standards against another project meeting the standards. Permission for use needs to be exclusive. She sees this as a three step process:

1. Initial permission
2. Land use application process
3. Take all details and ensure that final permission matches up

Ms. Nelson feels that the City needs to reject Mr. Carey's application based on the permission they had already granted to Mile High Marina, the third party does not have a lease and has not yet received that permission. The City needs to consider whether a 1995 Memorandum of Understanding between the City and Mr. Carey gave Mr. Carey some kind of exclusive permission to seek a conditional use permit or other permission to use City property.

There are a few reasons why that Memorandum of Understanding (MOU) does not create any exclusive right for Mr. Carey. It was an agreement to agree, the MOU states that the parties will promptly meet to discuss a proposed lease. If both parties had signed a lease it would be different, but that did not happen. The MOU contemplated prompt action, not an open ended time frame. If Mr. Carey had come in requesting permission for a lease prior to Mile High Marina's 2007 lease then none of this would be an issue.

Mile High Marina is here tonight to ask the City Council to not allow somebody to show up thirteen years after a prior agreement and push their way into a process that is already set in motion.

Mayor Kulesza asked about the last paragraph on the memo sent by Ms. Nelson, it states that a team of consultants and significant input from the public– what did that consist of? Ms. Nelson replied that there was a neighborhood meeting, they talked with some immediate residents in the Mill Park Condos, and there were lots of informal discussions and presentations to a number of groups including the watershed advisory group, one of the business associations in town and other organized opportunity to present the concepts.

Council Member Bailey questioned the same memo paragraph 3, it states that at the time of the 2007 negotiated lease both parties understood that Mile High Marina intended to seek a conditional use permit to expand the marina – How was this sentence crafted? Ms. Nelson replied that it was based on both the input of the impression that Mile High Marina had and as it has been reflected in the language of the lease; which says that the City will not unreasonably deny any expansion.

Mayor Kulesza stated that the information provided by Ms. Nelson was new information and the conditional use permit was not included in the lease discussion in 2007. Ms. Nelson acknowledged that it is new based on the next step in the process where by Mile High Marina has already accomplished step one.

There was some discussion among the Council as to when this information was presented in 2007. Mr. Kirkpatrick confirmed that there had been previous discussion of some expansion of Mile High Marina as much as 3 years ago.

Mr. Nichols stated that the concessions at Legacy Park or watercraft rental license agreements, as part of the discussion, was if the breakwater is replaced and there is some new stuff at Mile High instead of having the watercraft rentals coming to the beach, there would be a place for them to go to the Marina instead, so that there could be a public spot for the other business owners to have a place other than the beach for people to return the watercraft. That was part of the discussion; it was not binding to Mile High Marina.

Mayor Kulesza wanted to know to what degree did water quality come up either with the existing number of slips or with adding additional slips, capacity as far as how many boats on the lake and general acceptance from citizens of the community. Ms. Nelson stated that they had hired a water quality expert to analyze water quality issues, and discussed in part with the watershed advisory group. As part of any conditional use permit they will bring forward that report. In general the team has received a lot of positive support from a number of people within the community.

John Carey, representing McCall Gas Station Inc, addressed the Council with his understanding of the agreement of the Memorandum of Understanding (MOU) with the City of McCall. Mr. Carey is hoping to get consent to apply for a conditional use permit for a marina. Some points he brought to the Council's attention are:

1. This marina issue has been in discussion on and off for the last 10 or 12 years and about 3 years ago Mr. Carey started with the formal process for submitting for a Marina project. It was suggested that they join forces with Mile High Marina. About a year and a half ago they joined in communication with Mile High Marina to combine their efforts. They had about three or four meetings with Mile High Marina present. Then in the fall of 2007, Millemann put together an agreement for Snowy Peaks, Greystone, Mile High and Carey to sign and then they could proceed. At this time Mile High Marina and Snowy Peaks backed out of the agreement. Now there are two groups looking at a marina instead of one.

2. Mr. Carey stated that he is not prepared to discuss the MOU in any detail however there are a few points Mr. Carey covered in regard to the MOU. First he felt that the letter from Debra Nelson was adversarial and misleading. In her letter she referred to article 12 of the MOU and the flawed aspects of that article. Mr. Carey distributed a handout with page 5 of the MOU. He points out that there are four items that were to be "promptly addressed." Basically feels that only one of those items had actually been promptly reacted to was: the alley way to be vacated. The other three items that have not been promptly reacted to are: additional land to Legacy Park – took 10 or 12 years and now is resolved, pedestrian use of portions of East Lake Street - been addressed on and off for the duration of the agreement and now is being addressed 12-13 years later, and now the Marina use is being addressed.

Council Member Bailey asked if it was Mr. Carey's understanding of the language used that promptly applies to all remaining sub-paragraphs in the MOU. MR. Carey states that his understanding relates to article 12. Council Member Bailey stated that with this information he now has a different perspective as to what the MOU means. There was some brief discussion as

to what the statement “property lying northeast of Third Street and south of Hemlock Street” from the MOU means exactly. There was no definitive answer.

Council Member Scott stated that there had been some discussion about an expansion but she could not recall exactly when, she will refer to her notes for a better time line. She asked Mr. Nichols - Does the CUP process need to be exclusive? Mr. Nichols responded that he has not seen anything like this in 28 years however it makes some sense that it would be exclusive. Mr. Nichols also reminded the Council that with the conditional use permit (CUP) process, if the CUP is denied, the applicant must be informed to what needs to be done, if anything, to be approved. Mr. Nichols stated that he did not have real good answer to Council Member Scott’s question; it makes some sense that it is exclusive, but he has not seen anything that says it has to be.

Council Member Bailey stated that there are two problems to consider:

1. The marina expansion and what is reasonable in terms of the lease agreement.
2. The obvious threat of legal action or being a party to legal action between two competing interest for the same purpose.

Council Member Bailey expressed that the second issue would go away if the two parties would come back together and work together on the marina.

Council Member Delaney asked because she owned property near the land in question does she need to recuse herself from the discussion. It was decided that she did not have a financial interest or a preconceived idea of what the result should be, so she did not need to recuse herself.

Council Member Bailey stated that if the parties wanted to work together then the question would be whether the Council wants an expanded marina and how much of an expansion.

Mayor Kulesza stated that this is a new issue, the expansion of the marina, to Council Member Witte, Council Member Delaney and Mayor Kulesza. Does the City want additional slips? How do the citizens feel about an expansion? The water quality question is critical, what affect or potential affect for our Municipal watershed would this pose. What is the Capacity of the lake for watercraft? These are questions that need to be considered. Mayor Kulesza needs more information before making any kind of a decision on this issue. He stated that the Council may need to address this issue in an additional meeting with some of those questions answered.

Council Member Scott wants to get further legal advice on some of the issues as well. Council Member Witte agrees that there needs to be more information before any decisions are made. Council Member Bailey added that if any expansion affects the water quality, who pays for that? Capacity of the lake is worth having public discussion on the issue to get public input.

Mayor Kulesza suggested Mr. Nichols bring back information on the exclusivity issue and define the language of the MOU.

Council Member Witte asked if they could get a judge to review the documents and give an opinion. Mr. Nichols stated that there is a process called declaratory judgment, where there is dispute over an interpretation of a document, you can ask the court to decide the issue, and however it is a very lengthy process.

Council Member Scott would like to know, how binding the City is to the lease and to the MOU.

Council Member Delaney brought up the idea of, should the City look at doing their own marina, and what have other Cities done?

Mayor Kulesza tried to summarize what is being asked of staff and that is available information on water quality, and some sense of capacity that is current and what is being used. Pull together what information is currently available. Council Member Witte asked if it would be beneficial to have a public hearing or public comment prior to this coming to the agenda again. Mr. Kirkpatrick suggested a work session with staff on this issue then discussion and interaction in a separate session. The public comment received would be as the land owner not as the land regulator.

Council Member Witte wanted to know if the City has made any provisions for other marinas to expand.

Council Member Bailey wants some verification that points on the MOU paragraph 12: a, b, and d have been completed.

What kind of timeline for the special meeting? It was stated that there needs to be time enough to assemble the information but not too far out.

Mayor Kulesza would like it to be open and available for the public to attend, possibly at the Idaho first Bank. Mr. Kirkpatrick clarified that in 4-5 weeks a special meeting would be scheduled.

Ms. Nelson asked if the legal question on exclusivity could first be addressed, then on to the public meeting.

Mr. David Carey stated that it seemed extraordinary to him for the Council to not look at two proposals. He could not understand why all the other discussion took place and yet the Council not to look at one of the proposals. Mayor Kulesza stated that the Council is neither accepting nor denying a conditional use permit at this time. The Council is not prepared to do that at this time. It was Mr. Carey's understanding that they were at the Council Meeting for the Consent to apply. Mayor Kulesza stated that there needs to be some answers to some of the questions posed prior to making that decision.

Mayor Kulesza called a 5 minute recess at 8:40.

The meeting reconvened at 8:46.

AB 08-163 NHS lease amendment and termination of the MOU

Lynn Cundick addressed the Council with the possible lease amendment to the ground lease. Mr. Cundick referred the discussion to Mr. Nichols.

Mr. Nichols stated that based on the questions posed at the last meeting – What happens if the house goes into foreclosure? - If there is a foreclosure VARHA has the first right of purchase. If VARHA does not purchase it and the lender claims ownership, the restrictions would be dropped.

Mr. Nichols stated that the lease amendment needs to reflect that issue, so he added language to the lease that would tie the lease to department of lands and receive equitable rent, based on the value of the land that close to the lake at 57 cents per square foot equaling \$230 month.

Discussion to clarify what the amendment to the lease means.

There was another alternative discussed as well. The other alternative is the City could purchase one of the homes and then possibly rent it to an employee or put it in the VARHA rental pool. This would leave only five homes to sell the payment of \$175,000 to the City would be done with the purchase of one of the homes. The potential problem would be that it would not fix the problem that the other homes still have to be sold at about \$167,000 to pay off the NHS loan.

Council Member Delaney feels that the community housing project is unsalvageable. Council Member Scott is not opposed to letting it go to foreclosure and likes the idea of the City buying one of the houses.

There was much discussion and clarification of the lease amendment.

Mr. David Carey asked the question how the Greystone donation weighs into this. Are there conditions to the donation? The answer was, no there is not a reversionary interest.

There was much discussion on changing the equity percent and the reasons for making the homes more sellable while keeping them community affordable housing.

Council Member Bailey moved to approve the First Amendment to the Ground Lease and authorize the Mayor to sign all necessary documents. Mayor Kulesza seconded the motion and in a roll call vote, Council Member Bailey and Mayor Kulesza voted aye, Council Member Delaney, Council Member Scott and Council Member Witte voted nay and the motion failed.

Council Member Witte suggested some changes to the phrasing of the document she would like to see the final document prior to making a decision. Council Member Scott does not feel that lowering the purchase price is the right thing to do.

There is a difference of opinion amongst the Council Members as to how the lease would affect the current owners and the community housing idea.

Council Member Witte moved to approve the First Amendment to the Ground Lease with a change in the text so that if the lease hold is no longer used for community housing, the ground lease rent shall increase and be double the fair market value as defined by Big Payette Lake cabin site leases administered by the Idaho Department of Lands. Further, upon sale of the leasehold improvements, the definition of "equity" for determining additional rent payable upon sale shall be defined as the difference between the price the seller paid for the house and the price upon sale to the subsequent purchaser and authorize the Mayor to sign all necessary documents. Council Member Bailey seconded the motion and in a roll call vote, Council Member Witte, Council Member Bailey, Council Member Delaney and Mayor Kulesza voted aye and Council Member Scott voted nay and the motion passed.

