

CITY OF GENESEE

Location: 235 W Chestnut Street, (Fire Station) Genesee, ID 83832

CITY COUNCIL

February 9, 2021

SPECIAL COUNCIL MEETING

MINUTES

6:00 PM

CALL TO ORDER - The Genesee City Council met February 9, 2021. Mayor, Steve Odenborg, called the meeting to order at 6:00pm.

ROLL CALL – Present at the meeting, Council Members Nyla Roach and Bill Krick, Cody Bailey, Deputy City Clerk/Treasurer Debi Zenner. VIA ZOOM: Mayor Steve Odenborg, Council Member John Hermann, and City Attorney Jennifer Douglass

VISITORS: Roger Kinyon, Don Galloway, Jennifer Tengono, Jay Roach, Bill Magnie, Gary & Linda Kiss, and Carl Heilman

OLD BUSINESS:

Request for Reconsideration of Rezone of Property Located at 442 N Spruce Street:
Roger Kinyon and Cody Kinyon; dba CK Excavation

Jennifer Douglass began by saying we have a conflict of interest on this issue. We don't want any confusion about the record, so we want to make sure everything was submitted. Cody Bailey will recuse himself and council will have to re-vote their decision. We need to get everything on the record and finalized.

A. Councilmember Disclosure/Recusal RE Zone Change Application

Cody Bailey read a prepared statement: "I understand that the Applicant in this matter, Roger Kinyon, has suggested that I have a conflict of interest in this matter. I do not believe I am situated any differently than a property owner within a reasonable proximity of the applicant's property. I do not believe I have an economic interest in this outcome, but simply have the same concerns as other property owners about how this use may affect surrounding property values. After consultation with legal counsel for the City, I do understand that my testimony about this application to the Planning and Zoning Commission, could create the appearance that I've made up my mind prior to hearing all the evidence. I do believe I was able to hear the evidence and make a fair decision, but in the interests of preventing any due process violations or the appearance of a due process violation, I have decided to recuse myself when this application is re-heard. I will not participate in either deliberation or votes on the re-hearing." After Cody read his statement, he asked the Mayor if he could be excused, the Mayor excused Cody from the Council meeting at 6:07pm.

Jennifer Douglas cited Idaho Code 74 Chapter 4: Transparent and Ethical Government; Ethics in Government. According to this Code, it doesn't appear to be a conflict of interest, where Cody is concerned, but Mr. Kinyon disagrees.

B. Clarification of Record:

1. Applicant's Submissions: Jennifer Douglass read the PZ Packet and other information the City has received from all involved. We need the minutes from the hearing; Jennifer Douglass asked if there is anything missing as part of record? Jennifer Tengono, Attorney for Mr. Kinyon asked for the following to be added: Council meeting minutes from November 17th 2020 and December 15th 2020, as well as the recorded versions, from these meetings. Also, a letter missing from 6/30/2020 from Jim Larsen requesting rezone of property. An email from 8/20/20 from Jim Larsen to Karyn. Copy of the Petition from the residents in favor of the rezone. Ms. Tengono would like to add the dates and who the letters are from in support or denial of the rezone. Ms. Tengono stated Cody Bailey participated in the Planning and Zoning meeting on 10/20/20, says the comments he made, he made as a city employee. She also said Mr. Kinyon feels Cody Bailey tainted all of the hearings and they need to all be redone. She also indicated the Myers', Steve and Patti ,have sold their property and feels they are no longer affected by this rezone. Also, Ms Tengono stated the City did not give 15 days for this public hearing in the newspaper.

Jennifer Douglass asks what Ms. Tengono's objection is: Ms. Tengono stated it was Idaho Code: 67-6506 *"Conflict of interest prohibited. ... No member of a governing board or a planning and zoning commission with a conflict of interest shall participate in any aspect of the decision-making process concerning a matter involving the conflict of interest. A knowing violation of this section shall be a misdemeanor."* Ms. Tengono feels the City has the benefit from Cody speaking in both the Planning and Zoning meeting and then voting as a City Council member. Jennifer Douglass indicated, Cody did not vote at the Planning and Zoning meeting, as he only testified as a resident. Ms. Tengono indicated her client may pursue criminal charges.

Ms. Douglass said Council could remand this issue back to the Planning and Zoning Commission for their reconsideration without Mr. Bailey's comments as a resident, so his voice will not be heard at all. P&Z can make their decision based on all other information without Cody's testimony. Ms. Douglass is giving the Council the opportunity to revote or remand this issue back to the Planning and Zoning Commission for

reconsideration. Ms. Tengono also suggested this issue could go into executive session at another date, and the reason for executive session is because it relates to possible litigation against Cody Bailey.

Bill Krick asked if the Council give this rezoning issue back to the Planning and Zoning Commission, will any legal ramifications be nullified? Or option #2, if Council disregards the concerns and wants to re vote on the information they were given without the participation of Mr. Bailey.

Carl Heilman, a visitor, came forward to say he doesn't understand why Cody had to recuse himself, since everyone knew who he was on the City Council, as well as a property owner within 300' of the rezone. Jennifer Douglass said the recusal was Cody's decision after thoughtful consideration. He felt it was better to recuse himself than go to battle.

The Mayor asked Council if they had anything to add or further discuss. Motion was made by Bill, seconded by John, to remand this rezone issue back to the Planning and Zoning Commission to start the process over.

ROLL CALL VOTE: Roach, Krick, Hermann; AYES, motion carried.

Jennifer Douglass said there is no need to go any further, and asked the Clerk to notify the Planning and Zoning Commission as soon as possible and send out notices to all residents within 300' that this process will need to be redone. John asked if Ms. Tengono will drop all charges, pending against Cody. Ms. Tengono stated this is now at the discretion of the local prosecutor.

ADJOURNMENT-Motion made by Bill, seconded by Nyla, to adjourn at 6:50pm. **VOICE VOTE: Ayes; motion carried.**


Steve Odenborg, Mayor


Debi Zenner, Deputy Clerk/Treasurer