

CITY OF GENESEE

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

CITY COUNCIL

March 2, 2021

REGULAR COUNCIL MEETING

MINUTES

6:00 PM

CALL TO ORDER - The Genesee City Council met March 2, 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, Deputy City Clerk/Treasurer Debi Zenner. VIA ZOOM: Mayor Steve Odenborg, Council Member John Hermann and Cody Bailey, Maintenance Supervisor Dustin Brinkly, City Attorney Jennifer Douglass and Clerk/Treasurer Karyn Wright

VISITORS: Jordan Nelson, Gary & Linda Kiss (dismissed during Executive Session)

EXECUTIVE SESSION: Motion made by Bill, seconded by Nyla, to go into Executive Session under Idaho Code Section 74-206(1)(f) Idaho Code Section 74-206(1)(f) To communicate with legal counsel for the public agency to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated. **ACTION ITEM: RESPONSE TO OPEN MEETINGS COMPLAINT** at 6:02pm; **ROLL CALL VOTE: Roach, Krick, Bailey, Hermann; AYES, motion carried**

Motion made by Cody, seconded by John to come out of Executive Session at 6:33pm; **ROLL CALL VOTE: Roach, Krick, Bailey, Hermann; AYES, motion carried**

Back in Regular Session

Mayor Odenborg read a statement from our attorney: "On March 1, 2021, the City of Genesee received a complaint alleging that the City did not comply with Idaho law in regards to posting the City Council agendas on the City Website.

The City does maintain a website, located at www.cityofgenesee.com Due to Covid-19, the City's plan for training the Clerk's office with their IT Services Provider, to post agendas to the website, was disrupted. The City has successfully posted the Agenda for tonight's meeting on the Website.

The City of Genesee is referenced in a variety of facebook pages, and possibly other unknown social media pages. The City of Genesee does not currently control or maintain any social media pages.

The City acknowledges that the amended agenda did not get posted to the City website prior to the start of the meeting, as required by Idaho Code § 74-204. Accordingly, the items that were added to such agendas throughout the month of February, as shown in tonight's agenda, prior to the start of the meeting are void. The City intends to cure this unintentional violation by considering those items again tonight".

February 2, 2021 Meeting

Unfinished business:

Water Project Short Term Funding-Motion to table Bill, seconded by Nyla, VOICE VOTE: AYES, motion carried.

Scharnhorst Petroleum-Decision Clarification-Regarding him putting water into the City Sewer; Bruce will create a bio swale, and said it was already in the works to build and will not put his water in the City's Lagoon.

New Business:

2019-2020 Audit: John moves to accept the Audit, seconded by Cody; **Roll Call Vote: Roach, Hermann, Krick, Bailey; Ayes, motion carried**

Chestnut Street Property Use Agreement: Scott Becker discussed this at the February 2nd meeting; LHTAC Project that was through the City of Genesee, by the City of Genesee, to comply with the State, for LHTAC KN18770 Beech/Chestnut Street project. Motion made by John, seconded by Bill to approve the Mayor to sign for the City of Genesee, **VOICE VOTE: Ayes, motion carried.**

P&Z Recommendation 410 E Ash 5' set back on the shop/garage: Planning and Zoning sent their approval for this shop project over to the City Council. With the recommendation of the Planning and Zoning Commission, Bill made a motion, seconded by Nyla to approve the accessory building for Mr. Barber; **Roll Call Vote: Roach, Hermann, Krick Bailey-ABSTAIN; Ayes, motion carried**

Well Test Site-License and Option-Meyer Property-Jay Meyer will contact Jennifer Douglass to discuss

FEBRUARY 9th Meeting

OLD BUSINESS:

Request for Reconsideration of Rezone of Property Located at 442 N Spruce Street:

(Roger Kinyon, Cody Kinyon; dba CK Excavation) John made a motion, seconded by Nyla to amend the Agenda so that Mr. Cody Bailey will recuse himself from anything to do with the rezone of the property located at 442 N Spruce Street. **Roll Call Vote: Roach, Hermann, Krick, Bailey-ABSTAIN; Ayes, motion carried**

Jennifer discussed the conflict of interest on this issue. There was confusion about the record, so we want to make sure everything that was submitted, Cody recusing himself, council will have to re vote their decision. Just cleaning it up and finalizing

PUBLIC HEARING:

CODY READ HIS STATEMENT TO RECUSE HIMSELF. This was his disclosure of his conflict of interest.

Cody will rejoin the meeting after a decision is made. Attorney feels it can go straight to the remand to pz instead...any statement or discussion made by Mr. Bailey in lieu request of the applicant is to remand this issue to the pz commission, remanded purely by the commission without any information by Mr. Bailey.

Summarize: request for reconsideration. Ms Tengono's motion was that it be remanded back to pz....is this what the Council wishes to do? Consideration of record and evidence without anything from Mr. Bailey. Are we starting over or are we having pz review the existing evidence. Bill and Nyla had the same recollection that pz would be starting completely over. Jennifer wrote a written decision at the February 16th meeting. Jennifer Douglass said whatever the Council decides tonight will over ride whatever previous decisions were made by council. There was arguments about what was published as a public hearing and what was not.

Ms. Douglass asked what decision does Council want to go through. John doesn't see the purpose of limiting the scope, without adding new evidence. Question about a 15 day notice from Tengono. What are the positives vs negatives?

Redoing it entirely is completely removed and won't have to review the testimony to see if anything Cody said affected other individuals testimony, etc. The record will be more clear, gets rid of argument of any taint.

Drawbacks: public is already upset and maybe won't be willing to come back in to testify, everything will have to be completely redone, as far as notification.

Bill made a motion to begin over, sending this back to Planning and Zoning, since there are new people living in that area that need to be represented. Like nothing had happened and all would be revisited. Motion dies due to lack of second.

John moves to remand back to pz to consider the record without Cody Bailey's testimony, seconded by Nyla; reconsider for rezone without any testimony from Cody Bailey. To review the existing record without any testimony from Cody. ROLL CALL VOTE: Roach-Aye, Hermann-Aye, Bill-Ayes, Motion Carried.

A. Councilmember Disclosure/Recusal RE Zone Change Application

Cody Bailey said: Roger Kinyon believes there is a conflict of interest, but Cody believes he has concerns as a resident and property owner and feels he heard all the evidence clearly and made an unbiased vote.

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, Cody left the Council meeting at 6:07pm, February 9, 2021.

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 Bailey is concerned, but Mr. Kinyon disagrees.

B. Clarification of Record:

1. Applicant's Submissions: Read the PZ Packet and Other information the City has received from all involved. We need the minutes from the hearing; also is there anything missing as part of record?
Ms Tengono, Attorney for the Kinyons', would like the minutes from November 17th 2020 and December 15th 2020, as well as the recordings. 6/30/2020 Missing letter from Jim Larsen requesting rezone of property. 8/20/20 an email from Jim Larsen to Karyn. Petition from the residents, as well as the letters, against/favor of, with dates. Petition to approve the rezone with names and dates. Concern that Steve and Patti Myers have now sold their house, and Ms Tengono feels they are no longer affected by this rezone. Ms Tengono also stated the City did not give 15 days notice for this public hearing in the newspaper. Cody participated in the PZ 10/20/20—claiming the comments he made were as a City employee. Mr. Kinyon feels Cody Bailey tainted all

of the hearings and feels they need to all be redone. 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 at the Planning and Zoning meeting and then voting as a City Council member. Ms. Douglass said Cody Bailey did not participate in the PZ vote, only testified as a resident. Ms Tengono may pursue criminal charges.

Options are that Council could remand this issue back to PZ for their consideration without Mr. Bailey, so his voice will not be heard at all. And the decision, from the City Council, will be made without Cody. If this isn't redone, we could face possible charges against Cody Bailey. Ms Douglass is giving this decision to the Council to make or do we wish to have more comment from Ms Tengono, or could we go into exec session at another date, since this relates to possible litigation against Cody. Ms Douglass will leave this up to council to discuss among each other. Bill wondered if we give this issue back to PZ will the legal ramifications be nullified? Or, if a decision, with all of the information Council has been given, minus any statement or vote from Cody Bailey, and re-vote for the application to rezone. 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 farther. Clerk notify PZ as soon as possible and send out the notices. John wants to know what charges are pending against Cody...they would probably be nullified? Tengono indicated it will be at the discretion of the local prosecutor.

Public hearing September 2nd, City Council

2. Submissions by other Interested Persons
3. Submissions by City of Genesee

C. RE-Hearing on Zone Change Application: Deliberation and Decision Only

No additional evidence or testimony will be accepted or considered, except from the existing record

D. Re-Hearing on Motion for Reconsideration: Deliberation and Decision Only

No additional evidence or testimony will be accepted or considered, except from the existing record

John made a motion, seconded by Nyla, to amend the agenda for of our *Water Emergency*, and to add Roach Construction's bid, contracted scheduled to start in a week Roll Call Vote: Roach, Krick, Bailey, Hermann; Ayes motion carried.

Motion made by Bill, seconded by John to approve the Roach Construction bid, not to exceed \$15K; **Roll Call Vote: Roach, Krick, Hermann, Bailey; Ayes, motion carried.**

UNFINISHED BUSINESS:

Water Project Short Term Funding-Bill made a motion seconded by John to approve short term funding up to 200K, if the need arises before Bond money is available; **Roll Call Vote: Roach, Krick, Hermann, Bailey; Ayes, motion carried.**

NEW BUSINESS:

ICRMP Training- Date/Time Selection-TABLED

Chestnut Street (Sewer Project) Engineering Contract Amendment. Motion made by John, seconded by Cody to hire Mountain Waterworks to do the sewer project inspections; **Roll Call Vote: Roach, Krick, Hermann, Bailey; Ayes, motion carried.**

Pump House Storage (Chestnut/Laurel): Motion made by John, seconded by Bill to TABLE until the second meeting in May; **VOICE VOTE: Ayes, motion carried**

Meyer property contract-Motion made by John, seconded by Cody to approve the Mayor to sign the property agreement; **Roll Call Vote: Roach, Krick, Hermann, Bailey; Ayes, motion carried.**

Small expense pre-authorization for water/wastewater projects-(consider \$1,500 or something similar and two-party authorization, i.e. Steve/Bill)--Motion made by John, seconded by Nyla to approve with two party authorization; Bill and Steve reviewing; **VOICE VOTE: Ayes; motion carried.**

Well Drilling Contractor Selection/Award- Digwell Idaho's bid \$166,771.47 and Hydro Resources bid is \$287,099.00, Ryan Rehder recommended we go with Digwell Idaho. Motion made by Cody, seconded by John to award the Well drilling contract to Digwell Idaho; **Roll Call Vote: Roach, Krick, Hermann, Bailey; Ayes, motion carried.**

Communication Plan for Water/Wastewater projects: Was decided the first workshop would be March 9th.

Jordan Nelson-Chestnut Street Approach-No action needs to be taken because it is on the Agenda for tonight.

Review and Approval of Written Decision Vacating Reasoned Statement and Remanding Application for Zone Change to Planning and Zoning Commission: Kinyon Application RE 442 N Spruce Street- Jennifer Douglass read her statement. Asked if Council wants to adopt this statement? Motion made by Cody, seconded by Bill to adopt the written decision to vacate and remand the decision back to the Planning and Zoning Commission; ; **Roll Call Vote: Roach, Krick, Hermann, Bailey; Ayes, motion carried.**

Planning and Zoning Commission Appointment: Bill made a motion, seconded by John, to approve and appoint Jay Roach to the Planning and Zoning Commission, but to have him abstain from any deliberations or decisions in regard to 442 N Spruce Street Rezone; **Roll Call Vote: Roach-ABSTAIN, Krick, Hermann, Bailey; Ayes, motion carried.**

INTRODUCTION, READINGS AND ADOPTION OF ORDINANCES & RESOLUTIONS

Covid Protocol Proclamation 2021-1-Motion made by Bill, seconded by Nyla to accept Proclamation 2021-1;
VOICE VOTE, Ayes, motion carried.

Current Council Meeting Agenda for March 2, 2021

CONSENT AGENDA Motion made by Bill, seconded by Nyla to approve the Consent Agenda as presented, along with payment of the bills; **ROLL CALL VOTE: Roach, Krick, Bailey, Hermann; AYES, motion carried**

UNFINISHED BUSINESS:

Jordan Nelson-Chestnut Street Approach-Discussions regarding if this was going to be for his personal logging truck or would it be commercial? Cody made a statement, because of the other zoning issue, at a different location, he will recuse himself from this decision. Mr. Nelson says he does not do business at his personal shop and this will only be a driveway for his personal logging truck. It was mentioned maybe this should be sent to Planning and Zoning for their recommendation, because this was previously denied due to safety issues, when a sub division was requested, at this same location. Scott Becker has indicated he didn't see any concerns with this area. Bill made a motion, seconded by Nyla to approve this approach from Chestnut Street for his logging truck, with Scott Becker's recommendation, but Nyla would like to see the 50 mph speed limit sign moved further West, pending county approval; John will also recuse himself from any further vote on this subject. **ROLL CALL VOTE: Roach-AYE, Krick-AYE, Bailey-ABSTAIN, Hermann-ABSTIAN; AYES, motion carried**

ICRMP Training: Date/Time Selection-Council decided on March 12th at 10am for the training. Mayor will send Council an email to confirm.

CITY OFFICIAL STAFF REPORTS:

JOHN-No Report

BILL-Well drilling will begin on the 15th for the first test Well. Roach Construction will do the pad and driveway and wanted to say Dustin is doing a good job keeping everything moving.

DUSTIN- First two blocks of Chestnut have the sewer pipe in and manholes will be done as well. As the crew moves East, the road should get a little wider, but will get some traffic control in place. Citizen comments were, people driving too fast and needs to slow down, so there are no accidents.

CODY-Thanking the guys for snow plowing and their response has been great and the roads have been well taken care of.

We will need to discuss Jackson Street and see if we want to take care of it this year or wait.

STEVE-No Report

DEBI-No Report

KARYN-No Report

NYLA-Both restrooms at the RV Park have been taken care of and are open.

ADJOURNMENT-Motion made by Cody, seconded by John, to adjourn at 8:55pm. **VOICE VOTE: Ayes; motion carried.**

 *Nyla Roach*, President of Council
Steve Odenborg, Mayor

 *Debi Zenner*
Debi Zenner, Deputy Clerk/Treasurer