Minutes of the Regular Meeting of the City Council of the City of Lava Hot Springs, Idaho held on Thursday, February 13, 2020 at 5:30 p.m., Lava City Hall, 115 West Elm Street, Lava Hot Springs, Idaho.

Present: Jon Thomson, Mayor
Randy Benglan, Councilperson
Rickey Frandsen, Councilperson
Lisa Guthrie, Councilperson
Brian Hinz, Councilperson
Gary Cooper, City Attorney
Canda Dimick, City Clerk
Amantha Sierra, Office Assistance

Excused:

Guests: Cody De Los Reyes, Brandon De Los Reyes, Jeanie Avery, Carl Toupin, Officer Everson, Officer Taysom, Bryan Phinney, Sandra Drummond, Sherril Tillotson, Dustin Park, Jeramie Jenkins, Chris Boniface

Mayor Thomson opens the meeting and welcomes everyone.

Announce Agenda Deadline for March 12, 2020 meeting will be March 05, 2020: Mayor Thomson announced agenda deadline for March 12, 2020 meeting will be March 05, 2020.

Approval of Minutes (December 5, 2019, December 12, 2019, January 9, 2020 and January 22, 2020) - ACTION ITEM: Councilperson Hinz comments acronym CO (certificate of occupancy) needs to be spelled out. Mayor Thomson stated correction to motion on January 9, 2020, page 4 (four) missing “seconded” for the motion. Councilperson Hinz made a motion to approve December 5, 2019, December 12, 2019, January 9, 2020 and January 22, 2020 minutes. Councilperson Guthrie seconded the motion. All voted aye, unanimous.

The Pledge of Allegiance is led by Mayor Thomson.

Agenda Amendment: City Clerk Canda Dimick announced a change to the agenda. Carl Toupin - MRE –asked that the agenda item be worded differently. It is listed on the agenda as “on-line billing” and he would like to change it to on-line
billing and stream lining their rate schedule no increase to rates. Councilperson Hinz made a motion to add stream lining to MRE agenda item. Councilperson Guthrie seconded the motion. All voted aye, unanimous.

**Review & Approve Bills - ACTION ITEM:** City Clerk Canda Dimick reviewed list of bills with council. Councilperson Hinz made a motion to pay the bills with the exception of Knife River. Councilperson Guthrie seconded the motion. All voted aye, unanimous. Mayor Thomson reported on maintenance budget. He has requested that they track cost on vehicle maintenance, water & sewer. Hopefully this will give the City a better ideal on what needs to be budgeted for next year.

**Discuss Agenda Times - ACTION ITEM:** Mayor Thomson reported last month this was tabled. The council decided the meeting time and day was okay but, questioned if they wanted to keep the times on the agenda items. Council discussed option and concerns with taking times off the agenda. One of the concerns is guest and law enforcement on the agenda and the time helps them know when they need to be at the meeting. Suggestion is to rearrange agenda so guest and law enforcement are at the beginning of the agenda and other city items below them. Councilperson Hinz suggested moving agenda items and requiring staff at the beginning of the meeting. Councilperson Guthrie made a motion to keep the times and rearrange agenda items. Councilperson Benglan seconded the motion. All voted aye, unanimous.

**Law Enforcement/Code Enforcement:**

A) **Building Permit Report – Canda Dimick, City Clerk:** City Clerk Canda Dimick reviewed report from the State inspector with council. The State inspector have recommend issuing a certificate of occupancy (CO) to Richard Guthrie for new restrooms. The report shows several inspection for new 30x30 shop at the KOA.

1) **Certificate of Occupancy – 10255 Old Oregon Trail Rd New Restroom in Lower Park; Richard Guthrie, Owner - ACTION ITEM:** Councilperson Hinz made a motion to approve the certificate of occupancy. Councilperson Guthrie seconded the motion. All voted aye, unanimous.

B) **Monthly Law Enforcement/Code Enforcement Reports:** Officer Everson & Officer Taysom in attendance. They are looking at the scheduling for the July extra Patrol. The 4th of July is on a Saturday this year. The last time the 4th was on a Saturday they were very busy. Mayor Thomson asked how the Fire & Ice
weekend was. They reported no major issue was pretty much like a normal weekend. Council thanked them for the monthly report and their services.

C) Meeting with Bannock County Prosecutor – City Attorney - ACTION ITEM: Gary Cooper, City Attorney reported he talked with Steve Herzog Bannock County Prosecutor and he would like to schedule a meeting to discuss the City concerns. Gary asked council who would like to attend and what day and time is the best to schedule a meeting. Steve will also schedule someone from the Sherriff department to attend the meeting also. Mayor Thomson, Councilperson Hinz & Randy Benglan can attend depending on the meeting time and date. Thursdays and Mondays are bad days for a meeting. City Clerk Canda Dimick reminded council if they have a three or more council members they will need to post it as a special meeting. Mayor Thomson asked if he was considered a council member. City Clerk Canda Dimick said no, only the members that can vote. Councilperson Frandsen offered to fill in if someone can’t attend. Gary was asked to schedule the meeting and inform Mayor and council of date. At that time the council members will decide who will attend. Mayor Thomson asked if the new Code enforcer they’re in the process of hiring should that person attend. Gary doesn’t think it’s necessary, he will bring the code enforcer up to date on the meeting results. Councilperson Hinz made a motion to schedule meeting with Bannock County prosecutor. Councilperson Guthrie seconded the motion. All voted aye, unanimous.

D) Misdemeanor Citations vs. Infractions – City Attorney - ACTION ITEM: Gary Cooper, City Attorney provided council a report. He explained some of the items in the report will be part of the discussion with Steve Herzog Bannock County Prosecutor. City Attorney has given advice and willing to move forward with reviewing code and developing list. Councilperson Frandsen made a motion to direct City attorney to develop a list. Councilperson Guthrie seconded the motion. All voted aye, unanimous.

Online Billing – Carl Toupin, MR&E., Inc. - ACTION ITEM: Carl Toupin with MR&E Inc. introduced himself and reported on his relationship with business owners have improved since they took over the commercial billings. Many of their customers have asked MR&E about online billing. They have a few options for online billing but, before they can finalize they need to stream line there billing process. He provide council with one of his options for online billing not sure if it’s the one he will go with. Online billing will take two or three months before they can get it up and going. Before they do anything they need to provide there customer with notices explaining what they are doing, why they are doing and how
it will work. They want to inform and educate their customer before they implement anything. The customer will have the option of processing their billing online. He explained he changed his rate schedule last year in Soda and neighboring areas and now would like to change it in Lava. Carl provided council with the draft rate schedule. The rate schedule will no longer be based on each container gallon size it will be based on a group of container, small, medium and large container. This year he hopes to experiment with another large container. A large container or rollover is not on the rate sheet. Every customer in Lava is currently on the proposed streamlined rate schedule. There will be no increase. They don’t enforce policy that lids have to be closed. Their only concern is when placing bags that cause the lid not to close is that they place the bags so they do not fall off when the truck grabs it. If it falls off it cost him salaried driver’s time. Carl comments if he finds the larger can he is looking at they will be based off the rate sheet. He is concerned if he gets this large cans his customer will have to understand the can needs to be place exactly as instructed to prevent damage to truck or can. Carl hasn’t been able to find a 420 gallon can for over six (6) years. Shared can discussed. The streamline process will get rid of all the cans they no longer use or can’t get. City Clerk Canda Dimick explains the city ordinance does not allow shared cans in the city limits. Carl explained per the agreement they have the right to say which size and how many cans a customer can have. Carl explained they have never defined the time frame for annual agreement and now the amount of time for the annual rate is defined. The rate schedule agreement is an annual fee for a garbage can year round at the location of six (6) months or more. The flat rates fee is for customer who order cans for a short period of time (under six months) or continue to make changes to cans. Deliver charge is $25.00. Councilperson Frandsen made a motion to accept streamline rate schedule “A” as presented. Councilperson Hinz seconded the motion. All voted aye, unanimous. Carl reported that he has a half dozen delinquent accounts. He has notified them for disconnect, he has not disconnected anybody. The driver for the time being will not dump them. If they don’t get their accounts current he will pull the cans. Mayor Thomson reported that some of the large containers located in the alleys are impeding snow removal efforts and has talked with some of the businesses about their cans.

**Roof Top Bar Concerns – Sandra Drummond:** Sandra Drummond requested a “no parking” signs for end of Elm Street and by the fire hydrant at 291 E Elm. She reported that cars are being parked right next to the fire hydrant and sometimes she can’t get out. She explained that she couldn’t get to her home Saturday evening because of the parked cars along the street and it caused the street to be very narrow. Councilperson Hinz asked Sandra to clarify. Sandra explained there was
cars on both sides of her street. The street narrows making it impossible for her to get to her home. Mayor Thomson reported that parking was issue all over town on Saturday due to the Fire & Ice event. Sandra asked if there is a way to put up residential parking signs. Mayor Thomson explained it’s a public street residential parking should be off street. Sandra offered to purchase “no parking” signs if not in the budget. Councilperson Benglan asked if that street is as wide as all the other streets in town. Platted the same. City Clerk Canda explained it platted as wide but it’s not, major retainage walls would need to be put up. City Clerk Canda Dimick reported that no parking signs have been posted on the north side of the block above the Alpaca to Anna Hooper’s house due to the width of the Street, north side. The street width and excavation discussed. Councilperson Benglan reported on residential parking permits by the university in Pocatello that has been designated parking. He suggested doing that or posting “no parking” signs on one side of the street only. Sandra asked about excavating the dead end street between her garage and the south side of fire hydrant. Mayor Thomson reported that the city is looking at installing a retaining wall to address drainage issues there. City will take look at it. Sandra explained snow removal is a problem in that area which makes it difficult for her to get to her house.

Sandra expressed concerns with proposed pending alcohol sales onto top of the Hotel across the street from her. Beer can disposal and people hanging around her house is an issue. She explained the fireworks they shot off last summer that damaged her roof and it cost her six hundred (600.00) dollars to repair. She doesn’t mind the hotel but she doesn’t want to live across from a bar. She explained they had a party up on top of the Hotel last year. The noise from the music is shaking her windows. A discussion about adult parties on top of the Hotel discussed, she didn’t see it her daughter and granddaughter a crossed the street did. There were people not dressed outside dancing. She didn’t see it herself but, this is what she was told by her neighbors. The bar is advertised. Mayor Thomson will talk with the Fire Marshal about fireworks. There have been several areas in the City where illegal fireworks were on displays. Councilperson Hinz reported there is an Idaho law concerning the illegal fireworks. Mayor Thomson has had people complaining about noise level. There is a noise ordinance in effect after ten (10) o’clock p.m. Not sure is there is a decimal level during the day. I talked with Ken about fire code violation that had to do with the celebration down on Main Street this last weekend. Sandra is concerned with noise, parking and emergency services. City Clerk Canda Dimick clarified that the City does have a firework ordinance they adopted Bannock County ordinance, the city follows the county fire codes. The city doesn’t have a noise ordinance it falls under the disturbing of the peace. That’s a State code and a citation must be signed by whoever is being
disturbed by the noise. The City doesn’t have a ten (10:00) o’clock quiet time ordinance. The Council has assigned the Planning and Zoning commission to draft a noise ordinance and they’re working on it. Sandra explained twice a year she pays Patrick to trim the weeds along the trail thirty (30) feet from her fence to help with fire control. Councilperson Benglan expressed the issue with being in a residential zone across the street from a commercial zone there is going to be some conflict. That area was zoned that way before you bought your house. The City can only do certain things and we have to be within the guild lines of the ordinance and land use.

Business License(s) - ALL ACTION ITEMS:

A) ABC Seamless of Eastern Idaho – Bob Jorgensen, Owner/Applicant – Expired license renewal: Councilperson Hinz made a motion to approve. Councilperson Guthrie seconded the motion. All voted aye, unanimous.

B) ARS Flood & Fire Cleanup – Ryan Stosich Owner/Applicant: Councilperson Hinz made a motion to approve. Councilperson Guthrie seconded the motion. All voted aye, unanimous.

C) Center Street Retreat – Jake & Erin Winterton Owners/Applicants – Expired license renewal: Councilperson Hinz made a motion to approve. Councilperson Guthrie seconded the motion. All voted aye, unanimous.

D) Conestoga Leisure, LLC/DBA Greystone Manor – Vicky Lyon, Owner/Applicant – Expired license renewal: Councilperson Hinz made a motion to approve. Councilperson Guthrie seconded the motion. All voted aye, unanimous.

E) Conestoga Leisure/DBA Greystone Silver Grill – Vicky Lyon, Owner/Applicant – Expired license renewal: Councilperson Hinz made a motion to approve. Councilperson Guthrie seconded the motion. All voted aye, unanimous.

F) DLR Enterprises/dba Lava Hillside Suites (Hotel Lounge) – Brandon & Cody De Los Reyes, Owners/Applicants: Brandon & Cody (De Los Reyes brothers) in attendance. Brandon reported they’re still working on the deck and the building permit has not been finalized. Councilperson Hinz asked about the sign they have put up. Brandon explained it’s a banner announcing the “bar is coming soon”, the words “coming soon” are on the side of the banner. Councilperson Guthrie asked about all the people on the deck this last weekend. Brandon
responded there was a lot of people up there this last weekend but they were not selling anything. The fire dancer were up there this last weekend. Mayor Thomson comments you have no certificate of occupancy and should not have anyone up there until the certificate of occupancy is issued. Brandon reported they will keep people off of the deck. Mayor Thomson reminds them it is the same thing as the hotel no one was allowed to stay until a certificate of occupancy was issued. No occupancy until the certificate of occupancy is issued. Councilperson Hinz explains there’s a history. I mean before you started the project you put in a permit, but work started before the permit happened. No occupancy no matter how nice it looks or if it looks finished. Liability risk concerns expressed. Councilperson Benglan asked what the deck is permitted for. Council explained it’s not permitted for anything at this time. Mayor Thomson explained they have a building permit that was issued for a roof top deck. The roof top deck is not completed or signed off by the State inspectors or certificate of occupancy issued. Councilperson Benglan asked if the permitting is different for a use of a roof top bar. Mayor Thomson explains that is a different issue all together. Once they have the roof top deck built and completed they are applying for the usage or a business license for a roof top bar on that deck. At the time, we issued the building permit for a roof top deck to be used for the Hotel guest and it had nothing to do with a separate business. De Los Reyes brothers agreed. Then once the deck is completed they will apply for a business license to utilize that deck as a roof top bar location. Councilperson Benglan asked if the building inspector treats a roof top bar use differently. Would they need to make any updates because now they will be open to the public? Mayor Thomson would have to talk with the building inspector. As he understands the bar will be open to everyone not just the guest. Discussion about codes the building inspector may require followed. De Los Reyes brothers explained currently they have two business license one for DLR Enterprises for construction and one for Lava Hillside Suites, the Hotel and the council will require a third business license just for the wine and beer licenses. It’s all operated under the same company and location. Cody explained what the building inspector has told them regarding the roof top bar. They will inspect the rails, stairs and the load. The load is off the engineer’s specks. Councilperson Benglan asked Canda does a bar fall under allowed use or conditional use. City Clerk Canda Dimick responds a bar is permitted use. Councilperson Benglan reviewed there is four (4) things going on all at once. The building permit, business license, access and parking. Mayor Thomson reviews what has already been discussed. If the deck is to be used strictly and only for the guest of the Hotel then it won’t be a parking issue because they have already addressed the parking for the Hotel, nightly rental units. However, if they open the roof top decks to the public then they have the chance of having additional guest which, are not guest of
their nightly rentals units, then additional parking needs to be addressed at that time. Normally parking is attached to the building permit but in this case because the deck can be used either way, council decided to attach it to the business license application for the bar. Councilperson Hinz asked about their existing parking for the nightly rental. De Los Reyes brothers explained they still have the required eight (8) spots. Councilperson Hinz asked how customers get to them. De Los Reyes brothers addressed the property line dispute going on with a neighbor. What the county told them, there’s obviously a dispute over property line or the ability to use. The county said it’s a city issue and we need to address it with the City’s Planning and Zoning commissions to move a house or force a land swap. Which ends up with no good alternative as far as he can see by enforcing land swap or purchase of land. If that’s going to be an issue we probably need get to where we are sitting down with Planning and Zoning commissions. Councilperson Hinz comments it is an issue. The City gave you a certificate of occupancy based upon your parking spots and those spots are not usable right now, at all. Brandon showed council the topical survey map. They had the survey done before they built. Cody expressed concerns about making them move there house and they do not want to do that. They do not want it to come to that. The encroachment is five (5) feet by one hundred & ten (110). The property line is on the survey and not being disputed. It’s on the survey. The initial agreement with their neighbor was they would allow us to use part of their property and they could use part of ours and unfortunately that did not work out. Cody expressed again the last thing they want to do is cause any hardship on one of their neighbors. We don’t want to have a problem with that at all. I guess if the city forces them with the parking issue they will but, for the time being we have leased property for six additional parking spots. The lease is in place right now but they have eleven (11) available parking spots which is above and beyond the original agreement. It’s not it the most convenient area for us. Councilperson Hinz states it’s not an agreement it’s what is required and question if the square feet is accurate. Cody reads the ordinance. “For floor space used by the public or by members in a social hall, dance hall, night club, pool hall, restaurant, or other similar enterprise. A number of parking spaces equal to ten (10) percent of the capacity in persons. For the purposes of this section, capacity in persons shall mean the gross floor area divided by fifteen (15).” Cody explains the upper area is a thousand (1,000) square feet. The usable area for the public is seven (700) hundred square feet. Brandon explains that’s taking out the bar and rails. Cody explains seven (700) hundred divide by fifteen (15) it comes out to four point six (4.6) parking spots. Access to 2nd level parking discussed and property line disputed. Councilperson Benglan asked how the property dispute prevents them from putting in the agreed upon parking spots. De Los Reyes brothers explained they have a dual level parking, four (4) cars could fit up top.
Part of the road that was originally planned on for the second level parking access is on the property line dispute and they would rather not dispute it at this time. Brandon explained the road they initially planned on putting in for the upper parking was part of the neighbor land and part of ours. That allowed access to the 2nd level. Map reviewed and discussion followed. Part of the road is absolutely on the Osborn property and all the parking spots are on our property. They can fit six cars in their lower parking spots. The lower level has a separate access. Stakes and survey discussion followed. Councilperson Benglan asked if they have sold any beer or wine at this point. Cody explained they have not sold any, there has been alcohol consumed on the premises but none sold. Mayor Thomson reviews their current status you need to get the building permit completed and signed off and a certificate of occupancy to utilize the deck. Cody suggested they be allowed to sale beer by the case off premise. They have a Beer & Wine license through the State of Idaho and Bannock County. They would like to sale the beer by the case from their office. Cody explained the nightly rental license includes the right to sale retail from the office already but they have not sold anything at this time. Mayor Thomson explains the deck needs to be completed, the building permit signed off and certificate of occupancy to use it. The deck cannot be used at all. Once you receive the certificate of occupancy from the City the issue becomes how you want to use it or how you will be allowed to use it. Cody would like to understand, they currently have a license to sale from the office but to this point they haven’t done any retail sales. The nightly rental license includes retail sales. Councilperson Benglan addresses the business license application presented to council is for a hotel lounge not for beer and wine sales from the hotel office. City Clerk Canda Dimick explains a beer and wine license from the City will be required. The beer and wine license included with the hotel lounge business license application is from the State of Idaho and Bannock County. They do not have one from the City. The original business license for retail needs to be adjusted to sell beer and wine from the office for off premises sales. Since the rooftop bar is not approved they would like to sale out of the office for the time being. Council suggested applicant needs to submit an amendment to the original business license for offsite beer and wine sales from office space. Cody explains if the rooftop bar was approved then we would sale from there. Mayor Thomson comments since it’s not approved you want to sale out of the office. Cody comments correct. Discussion followed. City Clerk Canda Dimick suggested amending the original retail sales/nightly rental license to add beer-off which limits retail sale only from office location. Discussion followed. City Clerk Canda Dimick asked about advertisement for sale of beer not permitted per State law. Councilperson Hinz asked about additional parking space requirement for the sale of beer. Discussion followed on what is permitted. Brandon comments all they
are adding to their current license is another product. He feels it’s just like Mikes Market getting a new product in their store, the city doesn’t require them to get additional parking. Mayor Thomson reported the motion would be to make a revision to the existing license for the addition of beer sales from the office. Councilperson Benglan comments they will need to apply for it. Mayor Thomson comments then the motion would be for them to submit an application to amend the existing license adding retail sales for beer off site only to their current license. Discussion followed concerning the purposed Hotel Lounge, requirements to get to that point and council to consider a business license for a lounge. Councilperson Hinz asked if they have re-evaluated their restroom situation, is it still going to be urinal & a toilet. Cody explained when they get the building finish the plumber will look at a design plan. Let’s get the framing done first. Cody explained the clean out is right there so, there is drain access already there and the water is just on the other side of the wall. There is no issue as far as that but the layout has not been decided. Mayor Thomson explains the motion for tonight would be to table the building permit until the deck has a certificate of occupancy and then the advice would be to come in and proceed with revision to the existing building permit to get beer sold out of the office. Councilperson Benglan questions as far as working towards what they want to do there what kind of recommendations do we have from planning and zoning on the roof top bar. City Clerk Canda Dimick explains Planning and Zoning recommendations is not required because it’s in a zone that has permitted use. Councilperson Benglan question the land use issues like parking. City Clerk Canda Dimick nothing has been presented to Planning and Zoning. Cody asked if they need to do something. Councilperson Benglan explains the business license there’s the construction permitting and then there’s the land use and the land use includes parking. It’s not for us to solve your parking issues. Mayor Thomson instructed Brandon & Cody to complete the roof and get paperwork submitted to Planning and Zoning. Planning and Zoning should review all of it and then present us a recommendation based off the ordinance. Cody responded okay, if you need us there let us know. Councilperson Hinz explains it’s presented to us but, we don’t know if it falls within our ordinance, is what you are getting at. Councilperson Benglan responds exactly, so our role is for planning and zoning to say okay does this meet our ordinance and then legal reviews and it comes to council for final approval. Discussion follows. Concerns addressed about how narrow the street is at the top of Elm. During the winter time the snow piles up from the snow plow and takes more street area away. It makes it tough to turn a car around. Councilperson Benglan asked how they are going to direct their customers from parking in that area. De Los Reyes brothers explained they will have their online booking describe the additional parking across the street at the pancake house and adding a map showing the location of the additional parking.
lot. Their customers get an email from us when they book on line explaining everything they need to know about us. Councilperson Guthrie asked what happens if the pancake house sells. De Los Reyes brothers explains that’s a great question and a legitimate concerns. Our contract addresses it. If they sells it’s up to the new owners to decide if they want to keep with the arrangements. De Los Reyes brothers announced they have other negotiations going on in other areas for additional parking. City Clerk Canda Dimick explains they will be adding a Beer and Wine License to their existing Business License and the Mayor only has authorization to temporary approve a business license not a Beer and Wine License. Councilperson Hinz made a motion to table business license. Councilperson Guthrie seconded the motion. All voted aye, unanimous. Cody agreed a no parking sign needs to be posted in front of the fire hydrant. Mayor Thomson will talk with City Maintenance to see if that stretch should be no parking. Discussion followed. De Los Reyes brothers asked for clarification on the quiet time ordinance. Someone said 10:00 p.m. but when they visited with the very pleasant county Sheriff they have told us 10:30 p.m. City Clerk Canda Dimick explains the City actually the ordinance doesn’t have a time in it. It’s a disturbing the peace so, it can even happen during the day. Anybody that has a complaint about disturbing the peace they have to sign a citation. The council has asked P&Z (Planning and Zoning commission) to look at enacting an ordinance that would establish some quiet times and things like that and they are looking at what other communities are doing on that. De Los Reyes brothers explains the county is enforcing 10:30 p.m. City Clerk Canda Dimick reports most of the business downtown are going along those lines. They’re doing their own enforcements and I think they have set their own policy. Councilperson Hinz asked about their advertisement for adult entertainment. De Los Reyes brothers explains that the advertisement is not there. They don’t know how it got on their web site, they believe they were hacked. It has been taken down. They’re not running a brothel. It was brought to their attention by one of their neighbor’s and they took it down immediately.

G) Forsgren Associates, Inc. – Expired license renewal: Councilperson Guthrie made a motion to approve. Councilperson Frandsen seconded the motion. All voted aye, unanimous.

H) George & Lola’s Place – Lava Hot Springs Get Away, LLC, Owner/Applicant – Expired license renewal: Councilperson Hinz made a motion to approve. Councilperson Guthrie seconded the motion. All voted aye, unanimous.
I) Gili Apartments – Becky Gili, Owner/Applicant – Expired license renewal: Councilperson Hinz made a motion to approve pending Becky updates the business license to a 4-plex apartments for monthly rentals. Councilperson Guthrie seconded the motion. All voted aye, unanimous.

J) Lava Hot Springs Suites, LLC/DBA Suites of Lava Hot Springs – Lava Hot Springs Suites, LLC, Owner/Applicant – Expired license renewal: Councilperson Hinz made a motion to approve. Councilperson Guthrie seconded the motion. All voted aye, unanimous.

K) River Bridge Inn – Pamela & Mark Morgan, Owners/Applicants – Expired license renewal: Councilperson Hinz made a motion to approve. Councilperson Guthrie seconded the motion. All voted aye, unanimous.

L) Taquena Pelayo – Wendy A. Pelayo, Owner/Applicant – Expired license renewal: Councilperson Hinz made a motion to approve pending updated lease agreement. Councilperson Guthrie seconded the motion. All voted aye, unanimous.

M) The Lava Hotel, LLC – 196 East Main Street: Councilperson Hinz made a motion to approve. Councilperson Guthrie seconded the motion. All voted aye, unanimous.

Non-Property Tax Permit(s) - ALL ACTION ITEMS:
A) Winter Retreat, LLC/DBA Center Street Retreat – 62 S. Center Street: Councilperson Hinz made a motion to approve. Councilperson Guthrie seconded the motion. All voted aye, unanimous.

B) The Lava Hotel, LLC – 196 E. Main Street: Councilperson Hinz made a motion to approve. Councilperson Guthrie seconded the motion. All voted aye, unanimous.

Sign Permit(s) - ALL ACTION ITEMS:
A) Center Street Retreat: Councilperson Hinz made a motion to approve. Councilperson Guthrie seconded the motion. All voted aye, unanimous.

B) DLR Enterprises/dba Lava Hillside Suites – Roof Top Bar Sign: Councilperson Guthrie made a motion to table. Councilperson Benglan seconded the motion. All voted aye, unanimous.
Cabin Development Project – George Katsilometes: Mayor Thomson reported that George called and announced he couldn’t make it tonight and asked to be scheduled on next month’s agenda, same subject. Jon also commented the original building permit is expired and it’s been expired for more than one (1) year it will need to go before the Planning and Zoning commission.

Building Permit(s)/Development Permit(s)/Demolition Permit(s)/Sign Permit(s) - ALL ACTION ITEMS:
A) New Camping Cabin – Edge Water Resort, LLC/Applicant/Property Owner; Riley’s construction, Inc./Contractor: Kody and Andrea in attendance. Kody explained location and that he is going to demo an existing old garage on site. They are looking at changing the name on both location to East & West. Site plan reviewed. Permit was already pulled for retaining wall and the new retaining wall is up. Will need to put in new building. Stamped engineered fire suppression water design is included. The building is small, 18X20 and is identical to the one directly across the street. No bathroom in the cabin, we call it a camping cabin and it’s about fifty (50) feet from park restrooms. The cabins with bathrooms are called deluxe cabin. Councilperson Hinz asked what Kody’s plans are for the sign that he agreed to move. Kody responds sign removal scheduled for March/April. Kody has talked to Tony and they will be back before council next month to discuss curbing. They will bring all their property out to the edge and will ask the council what they want to do as far as putting in the curbing or the City putting it in. We are doing an improvement project right there it starts in March and hope to have it finish before preseason. Before Mother’s Day hopeful by the 1st of May because it gets busy. We have took on quite a lot this year and hope to have everything finish by then. Councilperson Hinz made a motion to approve. Councilperson Guthrie seconded the motion. All voted aye, unanimous.

B) Remodel existing park and infrastructure – K & A Camping/Applicant/Property Owner; Riley’s Construction/Contractor: Kody explained he didn’t realize this was going to be on the agenda but it’s alright he’ll give them a quick rundown on it. City Clerk Canda Dimick explained the big plans are there and doesn’t require a building plan. This is just the infrastructure work, the state said there is no building permit required they do not want to get involved. Canda explains it took her a while to decide what the City needed to do as far as documenting it for the record that the work was done and the City didn’t have any problems with it. She had told Kody we are not holding up the project we are going to go with it. She asked him to fill out a developmental permit and it can be handled that what and it will be on record. The project is all underground utilities. Kody explained they replaced the old system, everything has been
stamped and designed by engineers. It’s a big project and some of the stuff has required a building permits and they’ve pulled permits on all of that. We have a one or two (1 or 2) to pull next month. They were getting questions in town and we wanted something on record for anyone that wanted to see what they are doing. City Clerk Canda Dimick explained all plumbing is governed through the State. Kody explained the state told him they don’t need anything for this system. I talked with Canda and we felt the development permit documents the work. Everything is engineered, sewer & water and everything has an as built drawings. They will provide them when they are done and the city can file. The State requires all electrical and plumbing to be inspected. All of my work is passed with a State inspection. All lines are pressure tested and inspected. Kody came before the council and got the will service approved for the updated sites. Kody explains we basically are keeping the City informed on what we are doing and will give them copies of the engineered plans and the as build when everything is completed. The City building permit and development permit has stamped engineer plans attached to it if they don’t the State inspector will require it. No requirement for approval from the council for a development permit, it’s only information for the City. Councilperson Benglan question what is required to put in a campground in City limits. City Clerk Canda Dimick explains the city will require a concept plan, zoning approval for a campground. City makes the connection to the property and a licensed plumber runs the lines. Discussion on the State inspector requirements and approved engineered plans are built by State code, the State is the entity that will approve the infrastructure.

Lava Planning & Zoning Commission:
A) SALT RV Expansion Recommendation– Impact Area - ACTION ITEM: Mayor Thomson reported on the purposed Salt RV expansion which is in Lava’s impact area straight east of the river. Planning and Zoning commission has reviewed it and made a recommendation for approval. Bannock County has approved. Councilperson Hinz asked for clarification. City Clerk Canda Dimick explains the City received the on January six (6), 2020. Councilperson Hinz questioned the meeting the Salts attended in 2019. City Clerk Canda Dimick explained that was on a lot Split. The first initial notice the City received the Salts presented a lot split for building a home to council in 2019 and council supported it. Then the next notice was for a river setup back issue. That was present to Planning and Zoning commission made the recommendation to support whatever Bannock County wanted to enforce on that. The next notice the City got was on the expansion in January 2020. They’re purposing to add twenty sites, put in a private septic system and water system. According to the Salt’s this was supposed to be addressed in December 2019 at the Bannock County meeting.
and Bannock County didn’t have a quorum at the meeting so it was postponed until January 2020. The City didn’t receive the 1st notice and the City only received the 2nd notice and City Clerk Canda Dimick reported to Bannock County that they didn’t receive the notice in a timely manner where the City would have time to setup a meeting and properly address in the interim on it. She supplied Bannock County with council meeting schedule and explained the process for the Council would have to do in order to address. Bannock County approved the permit at their public hearing meeting with conditions. When City Clerk Canda Dimick talked with them advised the City to go through the steps discussing the situation and keeping them informed. They would like to know what the City position is. Councilperson Hinz made a motion to approve based on Planning and Zoning recommendation. Councilperson Benglan seconded the motion. All voted aye, unanimous.

B) Residential Apartment above Garage Recommendation – 130 West Fife – Alice Jean Avery, Owner/Applicant ACTION ITEM: Mayor Thomson explained at the council last month’s meeting Councilperson Benglan requested the application to be reviewed by the city’s Planning and Zoning commission. Mayor Thomson reports that Planning and Zoning recommendation is to approve if it can be connected with a common roof in the form of a breezeway. Alice Jean Avery provided plans to council showing existing house, existing garage and plans to connect roof to both structure. The roof wouldn’t overlap but it will tie-in. Alice Jean Avery also showed the plans for the interior of the apartment and the drawings for the roof structure. Discussion of the house and garage location followed. Councilperson Hinz asked about the plans for the apartment. Alice Jean Avery explained the use of structure initial use will be monthly rental but long-term use is for family and friends to stay in while they are visiting. Will never be over-night rentals. Councilperson Benglan verified the building will be considered a duplex and Alice Jean Avery answered yes. City Clerk Canda Dimick explains the action here is to consider Planning and Zoning recommendation the building permit will be on next meeting agenda. Mayor Thomson reported that the next step will be to update the building permit and present to council for approval once approved then the State will complete final inspection per code compliance then provide the city with their recommendation on the Certificate of Occupancy action. Councilperson Frandsen made a motion to accept Planning and Zoning commission recommendation. Councilperson Benglan seconded the motion. All voted aye, unanimous.

C) Fred Hinz and Curtis Waisath term expiration and reappoint - ACTION ITEM: Mayor Thomson reported that two (2) of our Planning and Zoning
commission will serve again. Councilperson Guthrie made a motion to approve appointment of Fred Hinz and Curtis Waisath for another four (4) years with Planning and Zoning. Councilperson Hinz seconded the motion. All voted aye, unanimous.

**Lava Chamber of Commerce – Kelly Myers, Event Coordinator:**

**A) Fire & Ice Update:** Not in attendance.

**B) Business and Marketing Plan 2021 and Request for Proposal – Sherrill Tillotson, Chamber Representative - ACTION ITEM:** Sherrill Tillotson reported that she has been working with Canda on resolving discrepancies. The chamber marketing committee has revised the RFP (Request for Proposal). Sherrill explained that they had mentioned at the council meeting last month that the Chamber of Commerce is seeking approval from the City on the way the RFP is written and assuring the Chamber of Commerce that the City is on board with it. Sherrill explained they have some vendors that they are seeking proposal from for our marketing service beginning in 2021. Based on the proposal that will come in, they will come in sealed to the President of the Chamber by a set date. Once received the President will call the marketing committee to gather. A selection committee has been organized which will now include a representative appointed by the City. Someone from the City needs to be represented in the selection of the marketing agency because everything ties into the 1% percent and the City participation in overseeing what we ask for, for budget funds. They hope to have the proposal in by early March. The proposal date in the RFP will need to be changed depending on the council decision tonight. Chamber of Commerce has identified four (4) agencies. Councilperson Benglan questioned how agency criteria was evaluated to narrow a list of twelve (12) down to the four (4). Evaluation process explained. Local mailings were mentioned. Sherrill explained the mailings are sent out four (4) times a year, next mailing will be about the folk festival and wellness festival around April time frame. Fridge magnet calendar suggested. Gary Cooper, City Attorney presented exact legal wording for the RFP contract, wording for RFP contract terms. Councilperson Benglan made a motion to accept the Chamber of Commerce request for proposal as presented with Gary Cooper, City Attorney changes and update on the return date. Councilperson Hinz seconded the motion. All voted aye, unanimous.

**C) Miscellaneous:** Sherrill Tillotson made a request to be added to the agenda next month. The beautification committee will be in attendance next month to report on their plans. Also the Jack Rabbit renewal contract is coming up and they will be bring in 1% request and understand they will not be approved until April.
Meetings/Announcements/Miscellaneous:
A) Direct Communication Franchise Fee - ACTION ITEM: Gary Cooper, City Attorney addressed research he completed and feels city can proceed. It gets complicated because of State and Federal regulations. Councilperson Frandsen made a motion authorizing Gary Cooper, City Attorney to open communications with Direct Communication. No one made a second (will need to be presented to council next month). All voted aye, unanimous.

B) Mutual Aid Agreement South Bannock County Fire Districts and Municipalities – ACTION ITEM: Mayor Thomson reported this is mutual agreement between all the small Fire Department in the surrounding area. Councilperson Hinz made a motion authorizing accept. Councilperson Benglan seconded the motion. All voted aye, unanimous.

C) Street Light Inventory – City Clerk: City Clerk Canda Dimick reported the City is being charged for sixty (60) poles and only fifty five (55) identified. They asked the City to complete an inventory list. Canda explained Justin and her completed the street light inventory list. The list has been forwarded to Rocky Mountain Power and Candy has asked Rocky Mountain Power to look into the discrepancy of five (5) poles. In the nineties during the beautification project several poles were removed and replaced. The poles taken down were metal and located in other areas in town. Canda questioned Rocky Mountain Power if they are on State Land.

D) Southeast Idaho Council of Governments 2020 Technical Assistance Grant for Park Improvements: City Clerk Canda Dimick reported Southeast Idaho Council of Government has a 2020 Technical Assistance Grant for Park improvement opportunity. Eligibility based on low income. New median income reports released next month. Council is interested in looking at opportunity.

E) Miscellaneous: City Clerk Canda Dimick shared a letter with council regarding Folk Festival funds that have helped fund Lava Elementary School music program presented.

Delinquent City Services:
A) Carmann J. Fagnant – 10240 E. Maughan Road - ACTION ITEM: City Clerk Canda Dimick explained a lien was filed and the City received money from the lien when the taxes were paid. The balance on the account is from when the State & City started working together on the property before the city purchased it.
Gary Cooper, City Attorney doesn’t think it sets any precedents because the city doesn’t have any way to enforce. It didn’t become a lien, the obligation as the property got wipe out with the foreclosure sale. The debt is really that of the owner of the property which we can’t collect. Recommendation is to waive it. Councilperson Hinz made a motion to waive the one thousand twenty two dollars and ninety two cents (1,022.92) of the City of Lava Hot Springs. Councilperson Guthrie seconded the motion. All voted aye, unanimous.

Ordinance Work Session:
A) Ordinance 2020-1 Business License Ordinance Amendment - ACTION ITEM: City Clerk Canda Dimick reported current ordinance requires a business license by parcel. Discussion on various situations, business types, LLC, DBA, multiply parcels, multiply business within a business, how the state tax operates and money collections. Councilperson Hinz made a motion to table. Councilperson Guthrie seconded the motion. All voted aye, unanimous.

B) Schedule Special Meeting to review Zoning Ordinance Draft - ACTION ITEM: Councilperson Hinz made a motion to schedule special meeting on February 27, 2020 at 6:00 p.m. Councilperson Guthrie seconded the motion. All voted aye, unanimous.

Projects:
A) Water Improvement Project:
1) Knife River Global Change Order – Discuss letter with Keller Associates - ACTION ITEM: Bryan Phinney addressed Knife River letter dated January 31, 2020 to the Council and they have copied a responds letter. Bryan announced that there are gentlemen from Knife River in the audience. Bryan explained they have requested consideration of the council. Knife Rivers has submitted a Global Change order request to Keller. Keller’s reviewed that against the general conditions of the contract. Keller’s letter spells out the areas in their opinion that they don’t agree with the request and part of the contract is that they can appeal their opinion to the city council. The global change order request is for a claim on the project and included in Knife Rivers package is the January 14 letter to Keller Associates that spells out the amount, final paragraph of that letter which is page three (3) of your packet. It spells out an amount of five hundred and seventeen thousand five twenty eight and seventy one cents (517,528.71). Keller’s reviewed the letter Knife River submitted to us and reviewed backup documentation and in their opinion based on the change orders that were negotiate as well as some other clauses and general conditions of the contract we recommended that days of the contract changes that had already been granted under change orders covered the
items that they represented. Councilperson Benglan questioned if the changes orders were already approved and executed during the process. Bryan replied yes and to this point eight (8) changes order have been considered and the City has executed. The ninth (9th) change order that came down today for a work change directive and has been approved/accepted as a work change directive and paid for. This one is being converted to a change order per DEQ request. Work change directive is a legal mechanism for the city to instigate or implement change but a change order is the contractor requesting a change and a field order is a change that doesn’t incur a time or dollar modification of the contract. DEQ has requested that the work change directive be converted to a change order. There is a 9th change order you’ve got it’s a zero (0) dollar impact, zero (0) time impact because it was already approved as a work change directive so it ends up being a formality of paperwork. Bryan explains in Keller’s letter dated January 29 Keller’s has listed the change orders, effective date, contract price change, contract time change and the allowable fifteen (15) percent markup by contract that is allowed for overhead and profit. Councilperson Benglan asked how we get from all this approved change orders to half a million dollars. Councilperson Benglan explains he is new to the council. Bryan explains that is detailed in Knife Rivers letter. The bottom line the project encountered some unknown conditions, multiple unknown conditions and as those were encountered the changes orders were addressed those unknown conditions. They were things like service lines that were not show, the French drain by Blue Moon, the service that they ended up spending three (3) days searching for because it was an underground utility that hadn’t been map out and all that work was addressed with change orders and they’ve been paid. Gary Cooper, City Attorney asked what does the contract require as far as procedure at this point. Mediation is mentioned in the letter, is that a requirement under the contract and is the next step arbitration. Bryan explains general conditions mentions mediation and Bryan doesn’t remember if it mentions arbitration for the 2nd step. It’s all handled in general conditions. General conditions does list mediation as the agreed upon 1st step. General conditions addresses a few of the items from the letter which are parts of the executive contract that both parties signed part of that agrees to a markup of fifteen (15) percent for overhead and profit and that’s why the allowable fifteen (15) percent markup applied as in our table. They went back and verified the change orders which ones that had it and the two (2) that didn’t one was a fixed fee it was new work. The other was a no price, time only change. Councilperson Benglan asked if that was change order number three (3). Bryan responded yes. Bryan continues the others all had price where quantity were being adjusted or new work was being done and those change orders were negotiated. Bryan explained as you look through exhibit C from Knife River you will see a list that’s four and half (4.5) pages and what they have
done is track each individual item and several of this were put together to make one change order to execute that. Which was an agreed upon method by all parties. Eight (8) changes order that were listed in Keller’s letter and four and half (4.5) pages with Knife Rivers documentation, those have been consolidated to change orders. Bryan continues to explain if you pull each individual change order which Keller has that documentation but not with him tonight you can see which of this items went into which change order. All of Knife Rivers backup documentation is attached and made it part of that change order so they can be tracked. Councilperson Benglan questioned the five hundred and seventeen thousand five twenty eight and seventy one cents (517,528.71) is based off their calculation in exhibit A. Bryan respond that he thinks the letter explains that number comes from a calculation of applying and efficiency that was anticipated to the project that they had not realized which caused additional overhead and he is sure the gentleman in the back can answer that exactly.

Knife River gentlemen introduced themselves, Chris Boniface, Dustin Park & Jeramie Jenkins. Chris Boniface explained that they would like to share with the board members. Chris provide council with a map that he thinks will paints a picture that they would like everybody to have the ability to see. The blue lines represent the water line project and the component that were built into that contract. On the map that they’ve provided we’ve put dots in every location that we believe there was a change from the original contract documents. If it was a, as Bryan has pointed out, different utility, a sewer service not shown that we had to do something to work around, the host of the issues on the project. Chris points out the transmission line there is six (6) items that have changed. On that line we were, even with the six (6) changes we call them discrete changes, there were change orders issued or not, to address those changes but he had such a long run of pipe to install it didn’t impact the total production of installing the pipe as we did it. In town when you look at all the different dots in the same street we’re never able to achieve our bid time productions or productions that we were able to achieve on some streets that didn’t have as many issues located on that street. Jeramie explains that one of the streets we didn’t have issues on we were able to actually exceed expectation or match are anticipated bid production were because we didn’t have a host of changes. Jeramie explains Bryan is correct in the fact that each individual change order was paid for the work accomplish on that task however it still impacted the days and time there were days that we couldn’t go anywhere. For example the condo road that set from April until November undone. Chris explained the analysis that was done in the back of that packet is the bid production rate for area of pipe in town. It excludes the offsite or the area around the transmission line. We compared our actually labor cost in hours that
were separate from what we were billed under extra work up against our bid budget and we were inefficient. Those inefficient were not capture the cost or payment for those inefficient were not capture under the discrete change orders that were issued for each individual change. When we issue a change order we understand the scope of that change it is modifying this fitting. We price the work to modify that fitting. We move down the street and there is another issue we price the work to fix that issue. What happens is when you have multiple changes or multiple issues consolidated to eight (8) change orders now nine (9) you can’t capture what that impact is to your daily production until you get far enough along. It’s that inefficient you don’t know exactly what it is as your march along but at the end of the day we were able to meet our bid item production on components that weren’t impacted. But at the end of the day because of all these we never had the opportunity to achieve what we plan on doing at bid time. That is really in summary what that change order is asking for compensation. Councilperson Hinz comments the first thing he would say when you put your bid together and you’re doing you bid and you’re line item it out each one you probably should have put a couple more dollars in each one of those pieces, if that was the case. Chris explained these are things we can’t see. Councilperson Hinz comments he has bid a lot of project and he knows how it is, it’s tough. Chris asked how you anticipate work you don’t bid the work you can’t see. Councilperson Frandsen explains it’s your experience in that type of work and he explains his own personal business and bid processes. He has drill water wells for State contract price per foot. It didn’t matter if he was in the hardest formation or the time it took him the price was per foot. It didn’t matter what we couldn’t see he still got paid the price per foot he bid. Chris comment they have provided reports to understand the whole conditions for this case for this work. So, there is an expectations we can’t properly bid it and put in achievable productions. We believe that we had achievable productions at bid time and that all these little things that happen throughout the project are things we couldn’t see and because there was so many of them we would like to see if we can be compensated for that extra effort. Councilperson Hinz comments the problem is none of this was brought to our attention through the project. You stated losing money at the end of the project cause of this inefficiency. Councilperson Hinz comments he gets it, then you start looking at to try to pick up some money. He has been a project manager and understands how it is at the end of a project. His concerns is none of this was brought to anybody attention in any of the change orders now it’s the end of the project and people are asking questions then you start working a little bit harder on this numbers. Councilperson Hinz understands he’s been there. Chris explained they would like the opportunity to see if we can come to an offer between parties and mediate this at our level here. If that something the City wanted to entertain. He has been though many of this
and a lot of times you can come to an agreement without hiring a mediator. Councilperson Hinz explains he has been on a lot of project where we are supposed to be done on “X” date and every day after that next year and a half I twenty guys out there we are writing a check for and it hurt. I hurt badly and I had a lot of people to answer to. Chris explains they’ve provided case studies that shows where this mythology has been accepted by the books. It’s in literature and we would like you to review it and see if you would entertain a least having another discussion to see if we can come to a resolution and go from there. Councilperson Benglan asked if a project this size you’re getting out of it this many change orders is not typical. Is that what you’re getting at? Chris responds that is exactly what we are getting at. Councilperson Benglan asked Bryan Phinney if he agreed with that. Bryan replies general yes, we found a lot of underground utilities, and a lot of unknowns. Now that being said a project this size in a community that’s brand new and it was designed ten (10) years ago. Would these underground utilities be expected? Yes because they would be documented. The City of Lava some of this utilities that we were digging up are probably pushing a hundred years old and unfortunately up until thirty (30) years ago documentation and record keeping isn’t what it is today. The agency that oversees your water lines wasn’t keeping documents where we can go back and get record of them which, is DEQ (Department of Environmental Quality). In addition you stack on top of that all the new utilities that have come out. The Fire Station line is an example of that. We design it, they come and lay fiber. Then we have a cross underneath, not one (1) but five (5) fiber lines. That happened between the time design was complete and the time that Knife River constructed that piece. Is that unheard of on a utility project? Absolutely not. Councilperson Benglan questions you’re doing project in old cities all the time. Bryan responds absolutely. Councilperson Benglan comments and so this inefficiency that we’re talking about should be, could be anticipated even if it’s a percentage wise number. Bryan responds in his experience and his got about twenty (22) years this is the first global change order that he has been presented with. Now, I’m not saying that right, wrong in different it’s just the first one he has seen. Have we ran into utilities project that we’ve hit unknown conditions, yes. Have we had utilities projects that are like the transmission line were we are digging through field and there is nothing there. Yes, you guys had a perfect example of that when we took the sewer line from the existing lagoons out to the new land app site. That one flew right along but, we’re also much like the spring we’re in an area were there aren’t a lot of additional utilities present. Now during design, what does the engineer do we do our best to call dig line, telephone company, power company, call cable company and what they do is provide drawings and in some cases they will come out mark and others they won’t. They just provide their drawings and that gets.
overlaid in these drawings but, that information is only as good as those utility companies provide us. Then you have instances that occur and I’ll use this as an example. Where we had the French drain, when we designed that there wasn’t a set drawing of that showed a French drain laid there nor was there any information that there was a bunch of water sheathing through there. After it got dug up we found out the water runs across the basement of the Bluemoon. Now do we normally show something like that on the plans? Not necessarily but, the bottom line is in that area Knife River put in extra effort. That extra effort was considered. A change order was executed. Compensation for the drain route was put in place because that was not part of Knife Rivers bid. That was extra material and it’s more expensive material. The extra time that they spent the crew truck, the excavators, the crew time to deal with that. That was in the change order and a fifteen (15) percent markup. Which by contract, both parties had agreed to that the fifteen (15) percent would be the overhead and profit markup on the project. That number is in general conditions. There is a mechanism in all contract called supplementary conditions that the engineer writes when they’re putting together the documents that modifies those general conditions. As we get into a project if there is a disagreement on a clause in general conditions there are mechanism to take care of that. If a contractor like Knife River comes forward and says listen fifteen (15) percent for this work is not enough and we hit change order number two (20) it’s not covering the amount of time we’re having to take for this that negotiating happens there. Now, I don’t know how that negotiating comes out rather the City says yes or we come to an agreement or what happens there but, that number can be adjusted. That conversation wasn’t had and that’s probably our biggest concern is any time that we have to start dealing with after the fact change order. At this point decisions have been made as budget was still remaining to go ahead and do additional pieces of the project but, now we wish we could take back out of the ground so you had the available budget to negotiating a change that wasn’t foreseen as we approach the end of the project. That’s my biggest heart burn. Chris responds for us it’s hard to Bryan. Mayor Thomson comments he is not going to get involved in the discussion of who’s right, wrong or indifferent. I was on the ground with this troops most of the summer I’ve seen what was in the holes when they dug them, I’ve seen some of the problems that existed. The example Bryan sat forth there on the French drain I agree with everything he said. It was a totally an unknown. We went through it. We added an additional cost for the change order on they brought in. Lots of rock, lots of fabric, they built a box they did a lot of things that weren’t even part of the scope of this project and the City processed the paperwork and paid for it. I guess what I don’t understand how we come back six (6) months after the fact and assign additional cost to that. That’s what I’m confused with. Mayor Thomson understands that you can go
back and look and say that it wasn’t the fifteen (15) percent didn’t cover that cost we really should have done twenty (20) percent and get another five but, to come back and hand me a change order that represents ten (10) percent of the total project cost or higher and to say wait a minute do you remember back in June. No I don’t remember back in June, I don’t remember back in September. To process all this stuff I can’t process in week time. I rely on Keller, who took a big chuck of my budget at the same time to do the design work and kind of doing the overseeing of what happened. We had a Keller representative as you well know on site everyday all day long. We had DEQ (Department of Environmental Quality) representative there on site all day long and I think you’ve all done a great job I’m not knocking your work, not knocking anything. I just didn’t understand the processes. I’m at the point here for his stand point and he’s sure the council stand point who had less time in field than I by a long shot to understand what all this document and this document and that document and your response really phantoms without being able to take the time to set down and go through it. Now are we open for negotiation I don’t think we have any other choice. If we don’t we are at the cost of both of us so, I think we need to proceed down that path.

Councilperson Hinz question why in your opinion should we disagree with engineer that we hired to do this on this change order. Chris explains there’re projects in spec that provide exploratory item that gives engineer or the owner ability to direct Knife River to go out and explore conditions that may be different than what are understood in the bid documents. This contract didn’t contain that bid item so, we didn’t know of any of these item on that map, we didn’t know they would have exist there. If Keller had or the City had a thought or maybe an understanding something could exist there that is different, they could have directed us that, paid us for time and material a pot hole before our production crew showed up. In this case we got there we discovered it, we have an account with Ferguson the next morning we bring a fitting from Idaho Falls down here. We fix the issue then we go back to work. That discreet change of that fitting for example. That cost of doing that markup for even the fitting and installing was included in that discreet change order. As you do one (1) change, two (2) changes you get a street done. We’re already moving done to street number three (3) before we are even putting this cost together on street one (1). So, you’re doing work under change order number six (6) before you’ve price out change order number two (2). Maybe you can explain the timing of change orders Brian but it takes time. The cost are there but, the compensation to offset those cost, the timing of that production lost is not understood daily. You try to capture it but, sometimes you can’t. As you continue with all those little things the jar bleeds. It bleeds because we didn’t have an opportunity to go find it ahead of time. To be prepared to fix it ahead of time or even know it was there. If we have that item for future
contract it’s helpful, then we would be prepared for those items. Bryan Phinney announced he is going to address that right now, had we known the item was there when we made the pot hole it would have been in the documents. See the problem with the Chicken and the egg here, which comes first. Could we had told you to go pot hole the entire street. I mean the best way to pot hole the whole thing would have been to request that Knife River to dig a trench down the streets (2) weeks ahead of your production crew, full depth, full width, full length, backfill it, then come back and re-dig it. That is the problem with that argument. If we have a pot holing line item. If you know that you’ve got some utilities that were marked and it’s going to be very messy I agree with the pot holing item. On an entire project like this, were there is no indication that the utilities are going to be a problem if we make the whole trench length I don’t know how you pot hole. I’ve been on project were you can pot here. The problem is the utility is four (4) feet this way and you hit the problem so, while that is a mechanism that can be used especially were there is an indication in an area that there is trouble. On this project I think that would have been difficult to do. Now there are a couple areas down around the hotel as we were starting to make that connection some pot holing may have been helpful but, it wasn’t until we dug that we realized and your crews realized and the City realized that the water line we thought followed the street didn’t, it diagonal across the street and so those were thing that we were running into. I just know how can know, my x-ray glasses work as well as everybody else’s. Chris comments the same as our at times. Mayor Thomson comments lets drift to another item here. Weather did not play in your favor. We had a very wet season this spring and that ran into a lot of stuff. We had pretty hazard stuff go on then the hot weather hit and you guys where totally unprepared for the forty thousand tourist we had in this town in the summertime. Which, I don’t know how you guys worked around that I have to commend them for that. Then we get into the fall and all the sudden Knife River is on other projects. Now, the bottom line is I still got a project over here that still needs to be finished too but, my crews all other in our in Montpelier or Bancroft or something like that. Point fingers and waiving hands and all that stuff after the fact is not going to get anything establish so I think the only course here that we can follow is set down and let us get a handle on what we’re looking at. Let us take time to dissolve what change order, that’s eighty six (86) pages, and I haven’t even been through it. Bryan obviously has and he has come back with a response. Some place in between there we’re going to have to come to an agreement and I think we are ready to do that or want to do that. Councilperson Hinz asked is this number here is this a lot like your mobilization number where it gets crazy high. Chris respond in our contract we explained what we feel we are entitle to and the full and final amount. That is the full and final amount. Is that the amount we are looking to ultimately settle on?
Yes, we are in titled that. Are we willing to mediate this and resolve it at a different number? Yes, we are. We want to resolve it. Councilperson Frandsen comments this is double the amount of all the change orders. It doesn’t make sense. Chris explains he’s seen some of this work them self out at that fifty (50) cents on the dollar. I’ve seen some work themselves out at one hundred (100) percent. We’re willing to mediate. So, if you guys would review it and setup a follow up meeting we would like to have the Keller, the City and the Mayor there and see what we can do. Mayor Thomson comments I think it’s going to take some work. You all knew this was coming but, from our stand point we had no ideal this was coming. So, it’s all new to us. Councilperson Hinz comments when we paid for change order six (6) we were done with change orders. Mayor Thomson comments we felt change order six (6) was the last change order. Councilperson Benglan comments it kind of feels like you want to get paid twice because you got to the end of the project and you are looking back you didn’t hit your profit margins. That’s what it kind of feels like. Councilperson Hinz comments if I could do a post change order on every project I’ve ever did I would be project manager of the year. Chris responds in fairness we purposely extracted the transmission line in are comparative. We’re not asking to rebid or reprice the transmission line. There were street changes on it, we’re compensated for it. There was enough linear footage for us to meet are production goals. In town it’s different because of the density of the street changes where so cumbersome we never had the opportunity but one street to meet our bid production. We didn’t have that crystal ball to see the next group of streets to see if we’re going to hit anything, we didn’t know. So that is why it comes so late. We don’t really know until the end and it’s like though all this street changes our inefficiency were not covered and we are entitled to those inefficiency under the change order clause. That is why we are asking now, after the fact, for the some little change order to offset those cost that we experienced doing this work for the City and we do appreciate your consideration. Mayor Thomson comments so the transmission line is not involved in this. Chris responds it’s not, the well is not included in it. Mayor Thomson reports he is honestly, I’m just flabbergasted by the amount of technical language. I had a hard time going through change order six (6) as an example, change order three (3), with change order two (2) and trying to keep up with it because you have work order, change orders and all this other stuff and then when you pay the things. The process was it comes in we reviewed it, it goes to Keller they reviewed it, it comes back to us, we approve it, it goes to DEQ (Department of Environmental Quality), DEQ approves it and then the check its cut. So, you see this thing three (3) or four (4) times and think is it ever going to go away. Chris explains that just the process of doing work. Mayor Thomson reports that’s just the process of a business. Chris explains they spend months and
months of reviewing every one of this changes. Mayor Thomson comments he’s got question about stuff on change order six (6) that we didn’t already taken care of or change order three (3) so, until we can go back in actually see what we are talking about, what you guys are claiming as needing compensation for and what Keller’s is claiming has already been paid for, we are kind of caught in the middle of. We need more time to decipher this, let us talk with our engineering people, we’ll meet again and hopefully we can come to an agreement. Not sure what the council is going to do, they’re the ones that actually make the vote. Bryan explained in Knife Rives letter that Jeremey has sent and what they are requesting is a meeting with the City to discuss this. Mayor Thomson explained he has received a couple of calls from Dustin and explains he’s not trying to put him off. I don’t want to discuss over the phone what needs to be discuss in a public hearing, public section. Chris responds sure. It’s very hard to understand, there’s a lot to, there was a lot of change orders on this project, it took us a lot longer and that is part of the reason why we are here. Is we need to come to back down again and actually set down spend some time and go through it and help you guys understand beside on paper through a meeting. Mayor Thomson asked if there are any more questions. Gary Cooper, City Attorney asked Bryan about Keller’s involvement from this point forward if we go to a meeting or if we prepare for a meeting, if it goes past there where does Keller’s start charging additional expenses to the city for your work. Bryan explains if we end up in a litigation stand point then we are going to be talking to the City about that. Gary asked Bryan what about up to that point, this meeting, mediation. Bryan explains this meeting is part of our contract. The setting down with Knife River and the City, we’re involved, we’re a technical representative for the City. We’re going to provide the City with our perceptive and our opinion. Ultimately the contract is between Knife River and the City. We’ve got a contract with the City but, Knife River is contract through us that way. We will support the City under our contract and our contract goes up to the ligation point and then we need to have a conversation with the City. So, setting down with Knife River, going over this stuff, going through all of this, going back to our records and photo that I did before I put this letter together to make sure I was using accurate information that’s part of our contract. That part of what we signed with you to take care of. Mayor Thomson asked who Knife Rivers focal point is. Response is Jeremy or Dustin. Chris explains honestly on this global change, I’ve been doing this for twenty eight (28) years. I’ve ran multiple project myself and really it’s because of the magnitude of all the changes. I mean just like you brought up, I asked you a long time of go and I asked Eddie, I mean have you ever seen a job like this with this many changes. Mayor Thomson responds I know and I would agree with exactly what you’re saying but I guess I was expecting like Councilperson Hinz example on change orders, we should have been alerted at that
time to expect more from Knife River on this change order instead of six (6) months later. It’s a shock! Now we need to take time to review and discuss with our engineers and at some point we will have to come to a medium. We’ll keep in touch. Thank you acknowledge. Bryan explained the next step is for council to review the information and then we need to set down in a meeting. Councilperson Hinz made a motion to table Knife River Global change order until a meeting can be scheduled. Councilperson Guthrie seconded the motion. All voted aye, unanimous.

2) Pay Application #15 - ACTION ITEM: Councilperson Hinz reports he has an issue with pay application fifteen (15) it came on February 11 that’s after our cut-off date. Bryan Phinney, City Engineer reports it is. We reviewed it, it checks against our numbers but, you’re right it’s after your cut-off date. Councilperson Hinz made a motion to tale until our March meeting. Councilperson Benglan seconded the motion. All voted aye, unanimous. Councilperson Hinz comments just so you know Randy so basically if it’s not on the agenda or submitted to the City one (1) week prior to the meeting. Discussion on when the pay application was received followed. Bryan report the amount of this pay application is one hundred thousand seventy two dollars and ninety six cents (120,072.96). Councilperson Frandsen questioned what work is in this one. City Clerk Canda Dimick reports it’s for change order number eight (8) which was already approved. Bryan explains he is unsure he knows Mathew reviewed it but unfortunately he was unable to be here this evening. He would be able to answer that question and I can an answer for you. Councilperson Hinz comments Jeremy sent this email February 11th at 3:41, Matt forward it over to the City February 11th at 3:59 well after the date, so. Bryan explains that one we were able to turn around quickly.

3) Change Order #9 ACTION ITEM: Bryan Phinney, City Engineer explained change order number nine (9) is that work change directive that was already authorized. Completely signed and executed by everybody and DEQ (Department of Environmental Quality) has come back and asked that it be changed from a work change directive to a change order. So, by executing that it does not impact the current price of the project we’re just converting a work change directive to a change order. I have an opinion on why they’re doing and I don’t agree with it but, they’re the funding agency and that’s the way they want it. Councilperson Hinz comments he would like to hear my engineer opinion. Bryan reports his opinion is you’ve got a young engineer who doesn’t understand the mechanism of work change directive and has never seen one and therefore is under the impression that only a change order can modify contract time and price. That is not the case. A work change directive is a modification of time and price that’s implemented by
the owner. A change order is a modification of time and price that’s initiated by the contractor. One is initiated by the owner and the other is initiated by contractor they’re of equal document. In Knife Rivers pay applications up to this point it has listed work change directive, I think it was number one (1), in the document. DEQ saw it that and said we are not going to be able to process final payment on whatever this WCB thing is. So, change order number nine (9) is simply taking what we already approved as work change directive and changing it to a change order so that the funding agency doesn’t have heart burn over it. Has no additional impact of cost and time to the contract. Councilperson Benglan question if that reflect what accurately accrued. Bryan responds yes, we look at change and the numbers, time and description match identically that work change directive. Councilperson Benglan comments so the difference between the two is who imitated it. Bryan responds yes. Councilperson Hinz comments so you guys know I’m all for DEQ, I’m hundred (100) percent behind them, based on previous emails. Councilperson Hinz made a motion to approve. Councilperson Guthrie seconded the motion. All voted aye, unanimous.

4) Access and Options to Purchase Real Estate Agreement for Well Site Update: Mayor Thomson reports there is no update he has not done a thing on it. He believe we are not going to do much on it until the global change order is resolved and review what funds are available at that time.

B) Buddy Campbell Park Expansion Project:
1) Great Basin Services, Inc. Asbestos Testing Quote – 10240 East Maughan Road - ACTION ITEM: Mayor Thomson reported the City has a bid from the mediation company. He went in last week and spent a couple of hours there. He’s sent the City a bid for testing requirements. Councilperson Benglan comments according to the bid the house requires additional testing more than normal. Councilperson Hinz reads verbiage from bid “a typical house does not usually require this many samples, this house multiple layers and different types of sheet vinyl, roofing, sidings. Also, there was additional sampling needed in both of the out buildings”. Councilperson Frandsen asked if this is for removal. Councilperson Hinz reads verbiage from bid “a typical house does not usually require this many samples, this house multiple layers and different types of sheet vinyl, roofing, sidings. Also, there was additional sampling needed in both of the out buildings”. Councilperson Frandsen asked if this is for removal. Councilperson Hinz responds no, this is for the testing of asbestos. Council questions if we just pay someone to do the abatement and demo. Discussion on what is required to do abatement and demo. City Clerk Canda Dimick explains the City has to certify where the debris is deposed of, which land field. Council reviewed options. Bryan Phinney, City Engineer questions if the structure is coming down. Council responds yes. Bryan explains there is a difference there and you need to be clear when you ask for your quotes on that. We had a house if you remember that sat out where the lands site is now. Transit siting, asbestos
insulation, asbestos roofing materials, asbestos laid in the kitchen and bathroom in the form of a linoleum product. There is a difference between abating and demoing. Make sure you are clear on that when you get your quotes. You’re not abating asbestos you are demoing a structure that has asbestos in it and then understand where that can go. It’s a hazardous material that is airborne but, there are land fields that will accept it as long as it’s properly managed when you tear it down, when you haul it and when you bury it and so you’ve got contractor who specialize in this who will know how to do that. On a structure that is being demo like that the first step rather than what you see them going in and spray it down with spray bottles, taking it off, wrapping it in plastic, double wrapped, hauling it out and dumping it in a dumpster. Instead of doing that you bring in the fire department and they wet everything down as they are tearing it down because you need to control the dust. There is different steps. Make sure when you take to your professional about what your intention is there and they can help you pick the right path. Councilperson Guthrie made a motion to not accept the bid for abatement and put bids out for demolition the house. Councilperson Hinz seconded the motion. All voted aye, unanimous. Read in full.

C) Pickle Ball Court Request for Proposal - ACTION ITEM: City Clerk Canda Dimick reports that Gary Cooper, City Attorney has suggested that we go with RFP (request for proposal) rather than bid initiation because of the twenty thousand (20,000.00) dollar amount that’s in the budget. The biggest thing on a RFP is we need to set up an evaluation form. Gary explained the criteria and the percentage requirements. Councilperson Frandsen made a motion to go forward with request for proposal. Councilperson Guthrie seconded the motion. All voted aye, unanimous.

D) Miscellaneous: Bryan Phinney, City Engineer asked if we know the status of the solar contract is. City Clerk Canda Dimick responds yes and she will get it to him.

Motion to adjourn into executive session. Meeting will adjourn in to executive session following the discussion period to complete Animal Control/Code Enforcement position interview/testing process as permitted by Idaho Code 74-206 (1) (a) and communicate with city attorney to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated as provided by Idaho Code 74-206 (1) (f): Councilperson Guthrie made a motion to adjourn into executive session as permitted by as permitted by Idaho Code 74-206 (1) (f) and

**Motion to reconvene:** Councilperson Benglan made a motion to reconvene. Councilperson Guthrie seconded the motion. All voted aye, unanimous.

**Motion regarding Animal Control/Code Enforcement position:** Councilperson Hinz made a motion to hire Lindsey for the Animal Control/Code Enforcement position at sixteen (16.00) dollars an hour with a ninety (90) day probation period with insurance effective immediately. Councilperson Frandsen seconded the motion. All voted aye, unanimous.

**Motion regarding probable litigation matters:** Councilperson Guthrie made a motion for City attorney to send letter to Hatch’s lawyer. Councilperson Benglan seconded the motion. All voted aye, unanimous.

Councilperson Frandsen made a motion for City attorney to send letter to Knife River’s deny the global change order. Councilperson Guthrie seconded the motion. All voted aye, unanimous.

**Motion to adjourn - ACTION ITEM:** Councilperson Guthrie made a motion to adjourn. Councilperson Frandsen seconded the motion. All voted aye, unanimous.

Meeting adjourned at 10:49 p.m.

________________________________________
Amantha Sierra, Transcriber

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Jon Thomson, Mayor

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Canda L. Dimick, City Clerk