

A Special Meeting of the City Council of the City of Lava Hot Springs, Idaho will be held by teleconference on Tuesday, May 19, 2020 at 6:00 pm. To participate or listen to the meeting, please call (408)638-0968, meeting ID number is 5731543907#, password 745563#. Depending on your telephone service plan, long distance charges may apply. All participants will be muted when they join the meeting. Participants are asked to stay on mute until they want to participate in their agenda item discussion. Participants can unmute themselves by entering star six (*6).

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: Matthew Hill, Bryan Phinney

Mayor Thomson welcomes everybody and called the meeting to order.

Concrete foundation for primary residence and detached garage – 166 East Booth – Victor Nickerson, Owner/Applicant/Contractor - ACTION ITEM: Mayor Thomson explains at last month regular council meeting council made a motion to table until complete plans were received in the City Office. Mayor Thomson explained he talked with Victor the next day and Victor was working on getting the plans completed and hope to have them submitted within a week or before he pours concrete. City Clerk Canda Dimick explained they called the city today to get contact information to request for inspection. Councilperson Benglan asked if plans are done. Mayor Thomson reported that he talked with him the next day and he was finishing up the plans. Mayor explained Victor's initial plans was to get the dirt work and trenching completed, put the steel in and wired together then pour in a few days. He was hoping to have the plans to the City within a week before they ever pour concrete. Apparently he has to have a quick look at the

steel. How it's wired together, spaced, height and all that stuff before he can get the go ahead from the inspector to do concrete. Mayor understanding was that Victor would have the plans to the City mid-week or late this week, Victor lives over in Evanston, WY. That was the primary need for the request that we give him permission to do the steel work and get the concrete poured before he got the house plans finished. Victor figured it would be just about the same time frame. Mayor Thomson explained the plans he submitted has no problem with set-backs or location, it was that the plan didn't include the house plan. Councilperson Benglan explained he voiced his opinion at last month regular council meeting and he's opinion has not changed. Mayor Thomson explained he doesn't think there is any indication that a foundation will be left without a house on it. Victor is a contractor and he is doing his own build. The likely hood of it not being completed is pretty slim. Councilperson Benglan explained he would like to see the plans before any construction. That is his position on it and he doesn't want to set a precedents any other way. Mayor Thomson acknowledge and explains there won't be anything in the additional plans that would have any effect on it. The plan has been looked at by the building inspector and preliminary approved. Mayor Thomson explained standard procedure for a building permit. The city looks at, in this case Lindsey McCulloch, City Code Enforcement Officer reviews for set-back, height restrictions and that the plan is accordance with the city's ordinance. The next step is the State inspector reviews plans and he approve per State codes, then it comes before council to issue a building permit. In this case the building inspector has already preliminary approved it and now it's up to the City to issue the building permit for him to proceed. Mayor Thomson explained the time frame on building permit approval process. Mayor Thomson suggested that council give him the authority to approve building permits and in this case give him the authority to approve this one when the house plans are submitted. This would help out with time restrictions for builds. Councilperson Frandsen explained the plans for the foundation address the property lines, off-sets and height and they're in accordance with ordinance. He is comfortable with Victor moving forward. Councilperson Hinz announces he has said in the past, were a lack of preparation does not constitute an emergency on our behalf and it really puts the city in a bad situation where all of the sudden we are getting this jammed down our throat and we have to make a decision right now. Mayor Thomson agreed and that is how the City should approach most things. Councilperson Guthrie feels like a complete set of plans needs to be submitted because if we let one person do it what about the next person that comes in. They will challenges the City on the prior acceptance. Mayor Thomson agreed but, do we hold this guy up for another month. Councilperson Frandsen asked what would be different from this plan and the entire plan as far as information the council needs to

approve or disapprove. Mayor Thomson comments actually nothing that he can tell. We basically have in the partial package he submitted all the information that we would normally look at from a zoning ordinance stand point, that's the setback, height and that sort of thing. What the house looks like, how the house is constructed, what goes into the house we don't ever look at and as you all know there is many incidence when someone starts building a home we get changes to the building permit on the design of the house. The answer to Councilperson Frandsen question is, there really isn't anything that would be within the house plans that would have any decision making quality on rather we issue or don't issue building permit. The only problem is setting a precedents by allowing someone to proceed without a complete package. City Clerk Canda Dimick interjected on a couple of things. Yes, it is different as far as policy but, in the City ordinance it does *not* state that they can't apply for a foundation under a building permit, it doesn't outline the phase approach or that we would require it in our ordinance. She feels like Victor is going to continue with his work and what will be done if you don't issue the permit. Mayor Thomson response I would assume that if you call a building inspector out to approve the steel, the footings or any phase of the build and there is not a building permit on premises it would be red tagged at that point. Councilperson Hinz interjected as far as what the city is going to do for them if they continue working without a building permit is nothing because that's the precedents we have set and that's the teeth we have. We have all kind of bark but we have no bite so, the precedents is we do nothing and they continue on and they still get what they want. Mayor Thomson questions isn't that the procedure when you call out for an inspection be it the foundation, the framing, the insulation or the wiring or whatever it might be. The building permit, per the permit it says must be hung on premises in plain sight and that's actually what the building inspector signs off. If the permit is not there and the building inspector comes to the site doesn't he ask where the building permit is and at that point if there is not one doesn't he red tag the construction and tell them to seize work until a building permit is received. Which I think is the only teeth we have in this process. City Clerk Canda Dimick explains on the State side they have issued the permit. The State doesn't know that the City has not issued the permit. The State has a building permit and the builder can assess the permit on the State web site with an assigned permit number from the State. Mayor Thomson reports in the past a paper permit was received and it had to hang on the construction site. What the inspector did electronic he had no knowledge of it but, they signed that paper copy every time they came to the location. City Clerk Canda Dimick explained they don't sign the paper. It's all done electronic. Discussion followed on process. Councilperson Benglan suggested a follow up with the State and inform them *not* to accept a permit unless entire plan is received. Councilperson Benglan made a

motion to table the approval of the building foundation until full plans are received. Councilperson Hinz seconded the motion. Roll call. Guthrie -Aye, Benglan-Aye, Frandsen -Aye, Hinz-Aye, unanimous. All voted aye, unanimous. City Clerk Canda Dimick suggested that Lindsey McCulloch, City Code Enforcement Officer needs to call the State tomorrow and inform the State that the permit has not been approved. Mayor Thomson agreed and agreed with Councilperson Benglan suggestion on informing the State that before they do inspection they need City approval on the building permit. Council agreed.

Water Improvement Project A) Punch List Items - ACTION ITEM: Mayor Thomson reported that Tony Hobson, City Maintenance and he have reviewed the list and found one of the three (3) items which was the curb, five (5) foot section, of the curb replaced on 3rd Street, on the West side of the Home Hotel, okay as is. The 2nd item is a trench strip that was replaced directly in front of the Hotel and west across the intersection there is five (5) water valves in there and all the valve have settled and need to be replaced. The 3rd items reads the entire trench down Main Street needs to be repaired due to several low spots. Mayor Thomson express that it might be more cost effective to do entire trench rather than five (5) or six (6) different places. It is Knife Rivers choice but, everything needs to be brought up to proper grade. The only item from the three items that can be passed on is the curb the other two (2) will have to be part of the warranty repair work. Councilperson Hinz would like to know why the City would remove anything off the punch list. Mayor Thomson explained he gave the report because the list has grown larger than the original list and he was asked to look at these three (3) items. Gary Cooper, City Attorney reported he thinks Knife River should be held to their contract. Bryan Phinney, City Engineer reported on the punch list yellow highlighted items and expressed his concerns. The curb replacement on 3rd by the Home Hotel is a piece where the curb was rolled at a different angle and the Mayor and Tony the made a decision there. The trench in front of the Home Hotel with the valves settling needs to be look at closer. The underline concern is why are the valves settling, is there pressure on the pipes. The valve box is moving. To repair the low spots on Main Street our concern are settlement areas are less that one inch over a six foot wide trench patch the entire length of Main Street and it varied in different places. When asphalt is laid you will get a little bit of deviation that accrues. When it's the entire road width you typically cant' see it but, when you have existing asphalt edges six (6) feet apart you start to see them a little bit easier. Part of that concern is could they reasonable get in and repair that without making a bigger mess with a less than an inch depression. Recommendation that material not be added, it's just going to chip out. Asphalt needs to be cut out and replaced. Concerns there is a patchwork quilt affect that would cause an inferior produc.

Mathew Hill, City Engineer explained during their walk through Tony Hobson, City Maintenance pointed out some areas of concern that wasn't on the punch list and expressed that council needs to make the final say on what goes on the punch list. The curb at the Home Hotel had *not* been on the punch list previously and wondered if it should be. Mathew recommendation is to treat the other two (2) items as a warranty item. Substantial completion date was in October so, in September of this year take a second look at those two (2) items and if they got worse then it would be a warranty item. Mayor Thomson reported his concerns on the valves in front of the home hotel are inch and half to inch and three quarter (1.5 – 1.45) out of plumb and that is beyond the one (1) inch. The other issue the city has is the city has a hundred thousand (100,000.00) dollar chip seal project for the entire length of Main Street, schedule for the end of August, 1st of September while weather is still good. The City is worried about work being done after the chip seal is completed. Bryan confirmed with Mathew that final completion has not been issued on the project. Bryan explained the punch list has to be completed before final completion gets awarded. There is a date and liquidated damages associated with final competition. A warranty item has to be taken care of before the one (1) year warranty period has expired or the contractor has to be made aware of it and they have to take care of it in a timely manner. That is the nuance between putting it on a punch list versus making it a warranty item. The settlement around valves that needs to be taken care of. Keller's work for the City and we will carry forward whatever the collective thought is and certainly we do *not* want to be repairing low spots after a chip seal has been done. I agree if chip seal is going to be done and we are going to make repairs in the same location those repairs need to occur ahead of the chip seal. The chip seal helps seal those cracks or those new seams that are going to be put in the asphalt and prevents that asphalt from detreating in the future. That's the purpose of the chip seal. Mayor Thomson questioned warranty work. If the warranty work is done at the end of the year does that add a year to that warranty work? Bryan responds according to the contract it does *not*. That is a nuance with completion of warranty items. We like to identify and bring those warranty items up and get the contractor working on them and then do an eleven (11) month inspection. Kind of a final inspection then we can put the contractor on notice if there is anything additional. Leaving them to the very end runs the risk and if they are done poorly and that warranty expires. Bryan explains if it's a warranty item and it's done poorly I would expect Mr. Cooper could carry forward that it was a warranty item and yes the warranty period is expired but, that work was done ineffective. There may be some legal ratification to that. Councilperson Hinz announces he has no interest in taking any items of the punch list. Gary Cooper, City Attorney comments he thinks it's a good ideal that we take nothing off the punch list. We can still listen to them if they believe that it's more

a warranty issue and doesn't belong on the punch list. It puts them on notice of the warranty issue. I think that is critical, they are put on notice for all deficiency, rather its' consider warranty work or punch list item and I recommend that everything is keep on the list. Councilperson Hinz made a motion to leave punch list as is. Councilperson Benglan seconded the motion. Roll call. Guthrie -Aye, Benglan-Aye, Frandsen -Aye, Hinz-Aye, unanimous. All voted aye, unanimous. Mayor Thomson reported he will interject one last statement, he thinks the reason we got involved on this again was that the punch list grew by leaps and bounds with what might be construed as warranty items. It's not the original punch list although there are still some items from the original punch list. I agree with what Gary is saying, leave it be and we'll discuss later. The council made a motion and passed that we leave the punch list intact as it is. Bryan announced he will get punch list submitted to Knife River in a timely manner. Bryan reported the punch list didn't grow arbitrary. The reason the punch list grew is the original punch list was done after snow had fallen and there was certain items we could not visually see due to the snow. A re-walk through was done after the snow had melted and this items were discovered and added to the punch list. Mayor Thomson expressed the need to know what the date schedule is for repairs he is concerned with chip seal project and it may need to be delayed if possible. Bryan will notify Knife River that the City has a chip seal project planned for the middle of August/1st of September and all warranty items need to be completed so that the chip seal project can move forward. Mayor Thomson reported he will get detail to Keller's on the set dates.

Motion to adjourn into executive session as permitted by Idaho Code 74-206 (1) (f) to discuss probable litigation matters with legal counsel - ACTION

ITEM: Councilperson Guthrie made a motion to adjourn into executive session as permitted by Idaho Code 74-206 (1) (f) to discuss probable litigation matters with legal counsel. Councilperson Frandsen seconded the motion. Roll call. Guthrie - Aye, Benglan-Aye, Frandsen -Aye, Hinz-Aye, All voted aye, unanimous.

Motion to reconvene - ACTION ITEM: Councilperson Guthrie made a motion to reconvene. Councilperson Frandsen seconded the motion. Roll call. Guthrie - Aye, Benglan-Aye, Frandsen -Aye, Hinz-Aye, All voted aye, unanimous.

Motion regarding Knife River Summons & Complaint - ACTION ITEM: Councilperson Hinz made a motion to retain Cooper & Larson as the City's legal team for the pending ligation with Knife River. Councilperson Benglan seconded the motion. All voted aye, unanimous. Roll call. Guthrie -Aye, Benglan-Aye, Frandsen -Aye, Hinz-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 07:30 p.m.

Amantha Sierra, Transcriber

Jon Thomson, Mayor

Canda L. Dimick, City Clerk