Minutes of the Regular Meeting of the City Council of the City of Lava Hot Springs, Idaho held Thursday, July 14, 2011 at 5:30 p.m., Lava City Hall, 115 West Elm Street, Lava Hot Springs, Idaho.

Present: Marshall Burgin, Mayor
Phil Beeson, Councilperson
Newt Lowe, Councilperson
Cathy Sher, Councilperson

Canda Dimick, City Clerk

Guests: Julie Neff – USDA, Gail Anderson – Blue Moon Bar & Grill, Roger Chermine – CHAT TV, Les & Joan Bocek, Lisa Toly, Rory Simons, Marion Gunter, Megan Toly, Nephi Reno, Don Kruse, Patty Kruse and Londa Palmer

The mayor called the meeting to order at 5:30 p.m.

Approval of Minutes
Councilperson Sher questioned council’s discussion at last month’s meeting to not fill the animal control/code enforcement position at this time. She asked if anyone from the council was going to take over the responsibilities. The mayor reported that council decided to just let it ride for now.

A motion was made by Councilperson Sher approving the minutes of the June 9, 2011, regular council meeting and the June 22, 2011, special council meeting. The motion was seconded by Councilperson Lowe. All voted aye, unanimous.

Reviewing of Bills
The city clerk reported that she is working on the garbage collection bill and will have it ready for approval at the budget work session next week. Councilperson Sher asked what was found in the clarification of the fire department supplies bill questioned last month. The city clerk reported that the bill is being paid by the Lava Rural Fire District.

A motion was made by Councilperson Lowe to pay the bills. The motion was seconded by Councilperson Sher. All voted aye, unanimous.

Law Enforcement

A) Monthly Report
The mayor reported that the city had received an anonymous email from a tourist saying that the police are not treating Lava tourists very well. The mayor is going to follow up and see how many tickets were written out on the specified weekend. No other action was taken.

B) July 24th Extra Patrol
The Bannock County Sheriff’s office has questioned if the city feels that there is
a need for extra patrols over the July 24th weekend. The city clerk reported that no funds were budgeted for extra July 24th patrols. The council agreed that no extra patrol for the July 24th weekend was needed.

**USDA Grant/Loan Documents for Wastewater Improvement Project – Julie Neff**

Julie Neff reported that Phase II of the Wastewater Improvement Project is getting close to bid and that the city needed to finalize the loan documents so that the project could be released for bid. The loan resolution was read as follows:

**LOAN RESOLUTION**

A RESOLUTION OF THE City Council OF THE City of Lava Hot Springs

AUTHORIZING AND PROVIDING FOR THE INCURRENCE OF INDEBTEDNESS FOR THE PURPOSE OF PROVIDING A PORTION OF THE COST OF ACQUERING, CONSTRUCTING, ENLARGING, IMPROVING, AND/OR EXTENDING ITS 2010 Sewer FACILITY TO SERVE AN AREA LAWFULLY WITHIN ITS JURISDICTION TO SERVE.

WHEREAS, it is necessary for the City of Lava Hot Springs (herein after called Association) to raise a portion of the cost of such undertaking by issuance of its bonds in the principal amount of THREE MILLION FOUR HUNDRED THOUSAND AND XX / 100 DOLLARS (3,400,000.00) pursuant to the provisions of Idaho State Code; and

WHEREAS, the Association intends to obtain assistance from the United States Department of Agriculture, (herein called the Government) acting under the provisions of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) in the planning, financing, and supervision of such undertaking and the purchasing of bonds lawfully issued, in the event that no other acceptable purchaser for such bonds is found by the Association:

NOW THEREFORE, in consideration of the premises the Association hereby resolves:

1. To have prepared on its behalf and to adopt an ordinance or resolution for the issuance of its bonds containing such items and in such forms as are required by State statutes and as are agreeable and acceptable to the Government.

2. To refinance the unpaid balance, in whole or in part, of its bonds upon the request of the Government if at any time it shall appear to the Government that the Association is able to refinance its bonds by obtaining a loan for such purposes from responsible cooperative or private sources at reasonable rates and terms for loans for similar purposes and periods of time as required by section 333(c) of said Consolidated Farm and Rural Development Act (7 U.S.C. 1983(c)).

3. To provide for, execute, and comply with Form RD 400-4, "Assurance Agreement," and Form RD 400-1, "Equal Opportunity Agreement," including an "Equal Opportunity Clause," which clause is to be incorporated in, or attached as a rider to, each construction contract and subcontract involving in excess of $10,000.

4. To indemnify the Government for any payments made or losses suffered by the Government on behalf of the Association. Such indemnification shall be payable from the same source of funds pledged to pay the bonds or any other legally permissible source.

5. That upon default in the payments of any principal and accrued interest on the bonds or in the performance of any covenant or agreement contained herein or in the instruments incident to making or insuring the loan, the Government at its option may (a) declare the entire principal amount then outstanding and accrued interest immediately due and payable, (b) for the account of the Association (payable from the source of funds pledged to pay the bonds or any other legally permissible source), incur and pay reasonable expenses for repair, maintenance, and operation of the facility and such other reasonable expenses as may be necessary to cure the cause of default, and/or (c) take possession of the facility, repair, maintain, and operate or rent it. Default under the provisions of this resolution or any instrument incident to the making or insuring of the loan may be construed by the Government to constitute default under any other instrument held by the Government and executed or assumed by the Association, and default under any such instrument may be construed by the Government to constitute default hereunder.

6. Not to sell, transfer, lease, or otherwise encumber the facility or any portion thereof, or interest therein, or permit others to do so, without the prior written consent of the Government.
7. Not to defease the bonds, or to borrow money, enter into any contractor agreement, or otherwise incur any liabilities for any purpose in connection with the facility (exclusive of normal maintenance) without the prior written consent of the Government if such undertaking would involve the source of funds pledged to pay the bonds.

8. To place the proceeds of the bonds on deposit in an account and in a manner approved by the Government. Funds may be deposited in institutions insured by the State or Federal Government or invested in readily marketable securities backed by the full faith and credit of the United States. Any income from these accounts will be considered as revenues of the system.

9. To comply with all applicable State and Federal laws and regulations and to continually operate and maintain the facility in good condition.

10. To provide for the receipt of adequate revenues to meet the requirements of debt service, operation and maintenance, and the establishment of adequate reserves. Revenue accumulated over and above that needed to pay operating and maintenance, debt service and reserves may only be retained or used to make prepayments on the loan. Revenue cannot be used to pay any expenses which are not directly incurred for the facility financed by USDA. No free service or use of the facility will be permitted.

11. To acquire and maintain such insurance and fidelity bond coverage as may be required by the Government.

12. To establish and maintain such books and records relating to the operation of the facility and its financial affairs and to provide for required audit thereof as required by the Government, to provide the Government a copy of each such audit without its request, and to forward to the Government such additional information and reports as it may from time to time require.

13. To provide the Government at all reasonable times access to all books and records relating to the facility and access to the property of the system so that the Government may ascertain that the Association is complying with the provisions hereof and of the instruments incident to the making or insuring of the loan.

14. That if the Government requires that a reserve account be established, disbursements from that account(s) may be used when necessary for payments due on the bond if sufficient funds are not otherwise available and prior approval of the government is obtained. Also, with the prior written approval of the Government, funds may be withdrawn and used or such things as emergency maintenance, extensions to facilities, and replacement of short lived assets.

15. To provide adequate service to all persons within the service area who can feasibly and legally be served and to obtain USDA's concurrence prior to refusing new or adequate services to such persons. Upon failure to provide services which are feasible and legal, such person shall have a direct right of action against the Association or public body.

16. To comply with the measures identified in the Government's environmental impact analysis for this facility for the purpose of avoiding or reducing the adverse environmental impacts of the facility's construction or operation.

17. To accept a grant in an amount not to exceed $1,306,000 under the terms offered by the Government; that Mayor and of the Association are hereby authorized and empowered to take all action necessary or appropriate in the execution of all written instruments as may be required in regard to or as evidence of such grant; and to operate the facility under the terms offered in said grant agreement(s). The provisions hereof and the provisions of all instruments incident to the making or the insuring of the loan, unless otherwise specifically provided by the terms of such instrument, shall be binding upon the Association as long as the bonds are held or insured by the Government or assignee. The provisions of sections 6 through 17 hereof may be provided for in more specific detail in the bond resolution or ordinance; to the extent that the provisions contained in such bond resolution or ordinance should be found to be inconsistent with the provisions hereof, these provisions shall be construed as controlling between the Association and the Government or assignee.

A motion was made by Councilperson Sher accepting the USDA loan resolution. The motion was seconded by Councilperson Beeson. All voted aye, unanimous. The mayor and city clerk then signed the resolution.

Blue Moon Bar Car Show July 23, 2011 (Request to block a portion of East Elm Street.)
Gail Anderson

Gail Anderson asked for permission to block-off East Elm from Center to South 1st East on July 23, 2011 for a car show and commented on the cars leading the annual Founder’s Day Parade that night. The council consented and authorized the car show and the cars to lead or follow the parade.
Lava Planning & Zoning Commission’s Facts, Findings and Recommendations for Mike & Vickie Hansen’s Application for a Set Back Variance.

The mayor stated that it looked like Planning and Zoning had done all that was needed and that everything was in order.

A motion was made by Councilperson Beeson accepting the Planning and Zoning Commission Statement of Facts, Findings and Recommendation on Mike and Vickie Hansen’s variance. The motion was seconded by Councilperson Sher. All voted aye, unanimous.

Scenic Tours/Helicopter Rides (Noise Complaints) – Cathy Sher, Council Person

Councilperson Sher presented petitions signed by 36 citizens/visitors protesting the noise from the helicopter rides. She stated that she feels that the situation is abusive because of the lowness of the flight and the narrowness of the valley which the city lies in. She stated that although the pilot has a county license, this is a city problem and she compared the noise to the Jake-brakes and snowmobiles which are both regulated by city ordinances. Councilperson Beeson and the mayor stated that there are no ordinances against snowmobiles and motorcycles, they are allowed in town.

Councilperson Sher doesn’t feel that the helicopter should be flying over town. She feels that the helicopter is a safety matter, she has seen him flying erratically and has logged 25 (every 10 minutes) flights over town on July 3rd & 4th. She stated that helicopter rides are a neat recreational opportunity but she doesn’t think that it is right for him to fly so low or at all over town. The mayor reported that he doesn’t know if the city has the authority to control the air space over town and that he plans on checking with the city attorney regarding the city’s authority.

Marion Gunter stated she had checked with the county commissioner and was told that as long as he doesn’t fly below 500 feet or above 1,000 feet, he is within his rights.

Les Bocek stated that the helicopter flies right over his home and they do not mind it, the train noise is 10 times worse.

Councilperson Beeson stated that the pilot is very accommodating and has lifted his flights higher to accommodate the concerns. The pilot is controlled by the FAA and he is well within his legal flying rights.

Lisa Toly stated that he flies from 10 am to 7 pm, which are well within quite hours.

Councilperson Sher stated that the point is the frequency of the flights. She also stated that she is aware that he is flying higher but it still isn’t high enough.

Joan Bocek stated that we have to accept that we live in a tourist community and there are certain things that we have to accept.
Don Kruse stated that when he flies over his home, they cannot talk if they are outside, every 10 minutes is a nuisance. He wishes that he would change his flight routes. He suggested looking into a nuisance law.

**July 4th Fireworks Display**

Joan Bocek thanked the City Council for the contribution to the fireworks for the July 4th display. The council complemented the Lion’s Club and the fireworks crew on the good fireworks display.

**Business License(s) & Non-Property Tax Permit(s)**

A) Feel Good Feet – Leanne M. Facer, Owner/Applicant

A motion was made by Councilperson Sher approving the business license for Feel Good Feet – Leanne M. Facer. The motion was seconded by Councilperson Beeson. All voted aye, unanimous.

**Building Permit(s)**

A) Residential Restoration - Fern Byington, 10284 E. Hwy. 30.

B) Residential Mobile Home Rebuild – Patricia Williams.

The council discussed Patricia Williams’ building permit. The city clerk reported that the building inspector had approved the permit and the city had received a memorandum of understanding from Lava Mobile Estates authorizing the construction of the site built modular home and granting permission to erect support posts upon the leased property at Space 33 signed by the manager on the owner’s behalf. Councilperson Beeson stated that he didn’t feel that the city should accept the memorandum of understanding signed by the manager. He would like the owner to sign it.

A motion was made by Councilperson Beeson approving the building permit for Fern Byington and rejecting the building permit for Patricia Williams and Barbara Cleveland until the Lave Mobile Estates owner’s signature is on the memorandum of understanding. The motion was seconded by Councilperson Sher. All voted aye, unanimous. The council gave the city clerk permission to issue the building permit when she receives the owner signed memorandum of understanding.

**Meetings/Announcements**

A) **July 23rd Parade @ 6 pm (Car for Mayor & Council & Candy)**

Councilperson Beeson suggested using the same truck as was used last year. Councilperson Sher requested a lower car as it is difficult for her to get in and out of a high vehicle. Councilperson Sher will find a car for the council to ride in the parade. The mayor will be one of the commentators on the announcement stand.
The city clerk will buy 3 boxes of candy to be divided between the council and the fire department.

B) Junipers for Portneuf River Access off of Old Oregon Trail Road for Portneuf River Partners Project
Bud Smalley, Portneuf River Partnership, needs 200 junipers to plant along the river. If anyone is doing excavation, they will remove the trees to replant.

C) City Code/Sidewalk Specifications
The city clerk reported that the sidewalk specifications are not in the city code. She asked if the sidewalk specifications should be in the code or put in a resolution. She stated that a resolution is easier to change.

The city clerk reported that the owner of the property across from the school would like to tear out her sidewalk and not replace it. This property is not on the list of areas that sidewalks are required. She asked if the school loop should be added to the list requiring sidewalks for any new construction. Councilperson Sher stated that if there is an existing sidewalk, it should be maintained and replaced. The council agreed that all existing sidewalks must be maintained and replaced as needed.

D) III A- Board Position Decline
The city clerk reported that a board position was offered to the city and the position was declined due to the traveling expense to Boise every month.

E) 2009 International Building, Residential & Energy Code Adoption Status Report
The city clerk reported that we are still waiting for the county to adopt the code. They are still working on the rates. The city will adopt when the county finalizes.

F) Tourism Development & Promotion Contracts Status Report
1) Forthgear
The mayor reported that the city clerk has drawn up a contract with Fourgear and the city on the lodging committee marketing project. The chamber is meeting on July 20th to review the contract. The city is waiting on the chambers approval of the contract. The city clerk reported that the attorney has reviewed the contract and approved it. She has put a representative from the chamber and the lodging committee on the contract as attesting to the contract so that they have approved what they expect to get from the project. The council agreed that the 1% tourism fund should be paying for the legal services and administration of the 1% projects.
2) Web Impakt
The city clerk reported that the Web Impact contract has been signed.

G) Schedule FY2012 Budget Work Session
A Budget Work Session was scheduled for July 20, 2011, at 5:30 p.m.

H) Tennant Street Sweeper Disposal – Mayor Burgin
The mayor reported that the school district says they do not have funds to purchase the street sweeper but they would like the city to donate it to them. The price was $5,000.

Councilperson Beeson reported that a new sweeper of the same size is $50,000. Councilperson Sher stated that she thinks it would be a nice donation to the school district. Taking the sweeper to the auction was discussed. It is no longer advertized on KSL.

Councilperson Lowe and Councilperson Beeson stated that they would like to try to sell it. The mayor will talk to Kent Whitaker, school board member, and offer to sale it for $3,000.

I) Miscellaneous
The city clerk reported that the containers for the cleanup had some contamination, a freezer and tires. Representative met with the city clerk to discuss solutions. The landfill is going to make up some magnetic signs to post on the dumpsters.

Projects

A) Wastewater Improvement Project

1) Inflow/Infiltration Study – Final Report
The mayor reported that the Inflow/Infiltration Study is complete. A copy is available for the council to review. The city clerk reported that there is an area in town producing 31% of the wastewater inflow. The mayor stated that the majority of it is hot water from the motels. He said that there are a couple of options to reduce this hot water inflow which are piping the hot water to the river or drilling an injection well.

2) Phase I Fencing Agreements
The city clerk reported that the agreement with Casperson’s is complete and has been sent to their attorney. It has not yet been signed. She is working on the fencing agreement with the L.D.S. Church.

B) Wastewater Rate Study Progress
The city clerk reported on the rate study. The Idaho Rural Water representatives
have reviewed the city’s equivalent user schedule and the city has also received an equivalent user schedule from the City of Shelly, the City of Ammon and several other cities. In comparing this equivalent user schedule to others, the city’s schedule rates are the same or lower than the other schedules. She asked the council how much work they would like the staff to do on the study. No determination was made.

**Wastewater Improvement Project Phase I – EPA Audit**

The mayor reported that the city had an audit by EPA. The auditor found several fittings in the pump house that are not American made. Because of the ARRA funding all materials are required to be American made. Kilroy will be working with their sub-contractors to correct the problem. EPA will not hold the project up while the changes are being made.

**C) Park Playground Surface Project**

Councilperson Sher reported that the Fibar will be delivered on Monday or Tuesday of next week. Blue Sky will send a check for $100 to load the wood chips that were delivered and not the correct product.

Councilperson Sher presented information on the Fibar mats to be used with the Fibar at the end of slides, etc. as an extra cushion. She has budgeted for 10 mats. She reviewed the Park Playground Surface Project budget. She presented information on a second sign notifying pavilion users not to place tables in the ADA access areas.

Councilperson Sher also reported that there is some money left over which she would like to use to purchase additional equipment. She presented information on ADA accessible picnic tables which is $625.79 with shipping and a 4 seat spring teeter tooter which is $1337 plus shipping. She asked for approval to pay for equipment before August 1, 2011, the grant deadline. She will note it in the grant report that the additional items have been ordered and the city is waiting for delivery.

The city clerk reported that there is an ADA picnic table which has been moved under the small pavilion, it needs to be moved back.

A motion was made by Councilperson Beeson to grant the city clerk approval to pay for an ADA table and a playground toy plus shipping from the IFFT Foundation grant funds. The motion was seconded by Councilperson Lowe. All voted aye, unanimous.
D) Directional Tourist Information Signs
Councilperson Sher reported on the difficulties in locating the visitor’s information signs. The mayor reported that he talked with Tony and has resolved the problem with locating the sign by the Museum.

Councilperson Sher mentioned that the sign at Main and Center was on the wrong post. She would like it corrected. The council had no problem with taking down the business district sign.

E) Miscellaneous

1) Center Street Project
The mayor reported that the city clerk had received an email from Forsgren Associates regarding the $100,000 grant from LHTAC for the Center Street resurfacing project. Forsgren thinks that the project can be completed for $150,000. The mayor would like to see the city budget $150,000 towards the project to add to the $100,000 grant to complete South Center Street and one block of Fife to the west. The council agreed.

2) Minutes
Councilperson Sher asked that the minutes be done earlier than the packets. The city clerk reported that the minutes have been sent to Councilperson Sher and Councilperson Anderson one week prior to the meeting. The city clerk stated that it may be difficult to do the minutes much sooner than that.

The mayor stated that he didn’t think that it was necessary to correct the spelling and punctuation, as long as the council understands what they mean. Councilperson Sher stated that she and Councilperson Anderson want the minutes to be professional and not sanitized. She wants the minutes to have what happened in the meeting. The mayor stated that he can read the minutes and get the total concept of what was meant by the minutes. Councilperson Beeson and Councilperson Lowe stated that they agreed, as long as it does not change the context, why worry about it.

Discussion – Items from the audience.
Lisa Toly questioned when the work on the sewer trunk line from the city to the lagoons would be done. She expressed that they would like to hook their house on Spring Street up when the sewer line goes by their property.

Adjournment
A motion was made by Councilperson Lowe to adjourn. The motion was seconded by Councilperson Beeson. All voted aye, unanimous. The meeting adjourned at 7:10 p.m.