

Minutes of the Regular Meeting of the City Council of the City of Lava Hot Springs, Idaho held Thursday, November 13, 2008 at 5:30 p.m., Lava City Hall, 115 West Elm Street, Lava Hot Springs, Idaho.

Present:

Marshall N. Burgin, Mayor  
Michael Vice, Councilman  
Newton J. Lowe, Councilman  
Phillip E Beeson, Councilman  
Katherine Smith, Council member

Canda L. Dimick, City Clerk  
R.B. Scott, Animal Control/Code  
Code Enforcement

Guests: Sam Netuschil, John & Tammy Clark, Rob Anderson, Greg Williams, Irene Bergendorf, Roger Chermine, CHAT TV; Jim Killingsworth, Officer Phil Nickel, Bannock County Sheriff's Department; Milan Zabka and Kathryn DeMott.

Mayor Burgin called the meeting to order at 5:30 p.m.

#### Minutes

Motion was made by Councilman Lowe and seconded by Council member Smith approving the June 19, 2008 Special Council Meeting, July 10, 2008 Regular Council Meeting and September 28, 2008 Special Council meeting minutes as transcribed. All voted aye. Unanimous. Motion was made by Councilman Vice and seconded by Councilman Beeson approving the September 17, 2008 minutes of the Lava Pride meeting council attended. All voted aye. Unanimous. Motion was made by Councilman Vice and seconded by Council member Smith approving the October 1, 2008 Lava Pride meeting minutes as transcribed. All voted aye. Unanimous.

#### Bills

Bills added to the list to be paid included Bannock County Planning & Development's bill for \$4,359.00 for the Lava Foundation water slide inspections; Bannock County Planning & Development's bill for \$70.50 for building inspections and JP Cooke Company's bill for \$54.47 for 2009 tags. The bill for holiday decorations ordered by the Christmas Committee will be paid from FY2009 funds. The city is still holding a check for holiday decorations that were paid from FY2008 funds, waiting for an invoice. Council member Smith will follow up on invoice. Flowers for Ruth Ann Olson were paid for from the Mayor's discretionary fund. Clothing allowance cap is \$500. City purchased fuel from the Sunnyside Sinclair while they tried to find a valve for the tank. A valve wasn't found so the tank has been secured with a chain and filled. Councilman Beeson reported that he had talked with an R-Co representative, blowers have been removed from the sewer lagoons, they are stored in the garage until R-Co picks them up and determines if the city is eligible for any credit. Bill is still in limbo. Motion was

Bills cont.

made by Councilman Lowe and seconded by Councilman Vice to pay the bills. All voted aye.

Lion's Gate Manor  
Signs

John & Tammy Clark, owners of the Lion's Gate Manor Bed & Breakfast, proposed plans to apply for Idaho Transportation Department TODS (Tourist Oriented Directional Signs) for their business. The business is growing, guests are not familiar with Lava and they spend a lot of time explaining directions so it's apparent directional signage is needed. The TODS program provides directional signage from state highways to assist tourists in locating specific businesses that provide services that they need. Signs are blue and white. Lion's Gate Manor qualifies for the program. Specific placement map was reviewed. Directional signs would be placed on Highway 30 visible to motorist approaching from West and East. Three smaller trail blazer signs would be placed within the city limits at key intersection along the edge of the city's right-of-way. Another sign would also be placed along Dempsey Creek Road in the county. All signs are professionally made by the state. Highway 30 signs will be installed and maintained by ITD. The trail blazer signs are installed and maintained by the business owner. There is no expense to the city. Support letters from each jurisdiction must accompany the application. Bannock County has endorsed support. Photos of the specific locations were reviewed. The old Lion's Gate Manor sign at the corner of 4<sup>th</sup> West would be removed if new directional signs are approved. A considerable amount of concerns and discussion followed questioning the city's authority to permit private business signs on public property and establishing a precedence. Motion was made by Council member Smith and seconded by Councilman Beeson to table matter for further research until the November 25<sup>th</sup>, 2008 Special Meeting. Lowe-Aye, Vice-Nay, Smith-Aye and Beeson - Aye. Motion carried. Councilman Vice doesn't feel the signs are private advertising, "it's tourist orientated directional signs."

Law Enforcement  
Monthly Report

Officer Phil Nickel, Bannock County Sheriff's Department, stated that he had nothing to report but questioned construction plans for the new water slides being installed over North Center. The slide will have twenty-two feet clearance with caged walkway.

East 1<sup>st</sup> Alley North  
Garbage Pickup

Irene Bergendorf addressed a recent letter sent to property owners living along Main Street from 4<sup>th</sup> West to 1<sup>st</sup> West asking them to relocate their garbage cans from the alley to Main Street for collection. Mrs. Bergendorf reported that she had contacted all effected property owners that were available. Letter from Ms. Gunter was read, "She is 72, disabled and can not pull her trash out to Main Street. My alley is not paved and I strongly disagree." Irene expressed that all those

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- East 1<sup>st</sup> Alley North  
Garbage Pickup
- effected feel the same, are upset and are going to have a hard time pulling their cans up the hill to Main Street through snow and ice. The reason for the route change was to prevent further damage to the asphalt but a portion of alley from 3<sup>rd</sup> to 4<sup>th</sup> is not paved. The asphalt was damaged by a concrete truck pouring cement for Jim Killingsworth's car port. Mrs. Bergendorf questioned why the asphalt wasn't repaired when the contractor was doing the work last summer so it didn't deteriorate any more. Irene asked the council to reconsider please because of the hardship. Councilman Beeson expressed that he brought it up for concern of the alley. The entire South edge of the alley is breaking off. The inconvenience is understandable. Weight of the truck is effecting the surface. There are cans in other commercial (business) areas being picked up in the alley. Surface was supposed to be repaired last year but it never happened. Surface needs to be looked at next spring. Motion was made by Councilman Vice and seconded by Councilman Lowe to reconsider in light of the new information and being a hindrance. All voted aye. Unanimous.
- Moving Van
- Irene Bergendorf voiced complaint about Ron Bateman's moving van parked on Main Street for two to three weeks. The van impedes vision for intersecting traffic. An officer had the van moved and the owner apologized. The owner was waiting for the APAK storage units to be finished. Comments about the truck parked over the sidewalk, against traffic and the trailer with the portable toilet unit were also made. It won't happen again.
- Idaho Outpost Water  
Service  
155 East Main
- Sam Netuschil questioned plans to lower the water service line to his property at 155 East Main to avoid freezing issues this winter. The city is going to fix it this year if possible. Sam asked that the bill be adjusted if repairs can not be fixed and water has to be left running. The building is being serviced by two lines. Sam reported that the building is eventually going to be all store and that only one service line is needed. The second line will be abandoned.
- Animal Control  
(2009 Dog Licenses)
- Motion was made by Councilman Vice and seconded by Councilman Lowe offering the 2009 dog licenses at a 50% discount if purchased before January 1<sup>st</sup>, 2009 as done in the past. All voted aye. Unanimous.
- Animal Control  
(Livestock Permit -  
Vicky Lyon)
- Vicky Lyon's livestock permit application for two horses in a fenced pasture was considered. Permit obtained at least 75% of the adjoining property owners and/or occupants written consent within 300' of the premises where the horses will be maintained as required. Motion was

Animal Control cont. (Livestock Permit)	made by Councilman Beeson and seconded by Councilman Vice approving the livestock permit. All voted aye. Unanimous.
Business/Alcohol/Coin Op Licenses (2009 Renewals)	List of 2008 licenses was reviewed. Motion was made by Councilman Lowe and seconded by Councilman Beeson approving the 2009 business, alcohol and coin-op license renewals. All voted aye. Unanimous.
(EE Networks, LLC)	Motion was made by Councilman Beeson and seconded by Councilman Lowe approving EE Networks, LLC, Jesse Dunn, Owner/Applicant business license application. All voted aye. Unanimous.
Building Permits (2 duplexes - Greg Williams)	<p>Greg Williams reported that he had his property surveyed and the alley is not in the proper location and there are encroachments. Discussion followed regarding plans on filling in the alley and install a 3' to 4' retaining wall along the south side of the platted alley so access can be maintained for adjoining North side properties. Greg questioned alley access to the Smith's property. Katie reported that she had alley access before and that she put it back together during a recent construction project. Council member Smith explained that the alley access issue is not only for her benefit that she has talked with neighboring adjoining property owners and they are very concerned about losing access to their back yards. The one neighbor has a fence up but it has been taken down numerous times to gain access. The fence is encroaching 10 feet into the alley. Council member Smith has contacted a surveyor to survey her property as well as legal counsel. Council member Smith believes that she has prescriptive rights. Greg believes that Smith's access can be maintained but he is not sure about the other neighbors. Council member Smith had asked for copies of the minutes to keep neighboring property owners informed but she didn't get the information until last night and this morning so she wasn't able to contact them in Utah and have them attend the meeting. The uses and boundary lines have been existing for years and the prior property owner to Mr. Williams never contested it. Council member Smith clarified that the issue is not only for her benefit. She feels that she is in an uncomfortable situation because she is on the council and she would rather fight for her property rights. Adjoining property owners don't live in Lava but they are very passionate about their property and they need to be informed. Mr. Williams reported that the neighbors alley access will be about the same as it is now, there will be a hill and Smith's would have to access the alley from Center Street. Mayor Burgin explained that there is a law that one can not adversely occupy public property. Mr. Williams would like to get the plans approved so that he can start the</p>

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- Building Permits cont.  
(2 duplexes - Greg Williams)
- project in the spring. Motion was made by Councilman Vice approving Greg Williams building permits for the two duplexes as laid out in the plans. Council member Smith felt that the plans do not satisfactorily addressing the access/alley improvement issue for her and the neighbors benefit. Mr. Williams is willing to deed 8' to 10' of his property to the city to widen the alley. Alley would be raised a little bit with accesses maintained to adjoining property owners. Plan is to improve access not restrict it. Landscaping will help drainage problems. Mayor called for a second to Councilman Vice's motion. Motion died for lack of a second. Councilman Lowe stated that he would second the motion if he could excuse himself from voting to avoid any conflicts of interests. Mayor Burgin informed Councilman Lowe that he would be required to vote. Lowe-Aye, Vice-Aye, Smith-Nay and Beeson-Nay. Tied vote. Mayor-Aye. Motion carried. Mr. Williams assured Council member Smith not to worry that things will be worked out. The easement will be documented and recorded as a condition.
- (Fern Byington's Porch Repair)
- Motion was made by Councilman Beeson and seconded by Councilman Vice granting Fern Byington's building permit to repair porch at 10284 East Highway 30. All voted aye. Unanimous.
- Sale of Liquor on Election Days
- Authorizing the sale of liquor on primary and general election days was considered. Motion was made by Councilman Vice and seconded by Councilman Lowe to amend City Code, Chapter 3 Section 2A-13 by removing item ( c ) so that it reflects House Bill 348 that became effective July 1<sup>st</sup> to mirror Idaho Code. All voted aye. Unanimous. Ordinance will be drafted.
- Planning & Zoning Commission  
(Alley Vacate - Milan Zabka)
- Recommendation denying Milan Zabka's alley vacate request was introduced. It was mentioned that a letter from Mr. Milan Zabka addressing the matter was received. Mayor Burgin explained that no input will be allowed from the audience, the public hearing is over and the decision will be based off of the Planning & Zoning Commission's findings. Minutes of the public hearing were not in council's packets. A portion of the hearing minutes was read aloud from the beginning to David Grosso's input. Council had received copies of the minutes in their mail files previously and majority had read them. In the essence of time, council agreed to proceed with reading the final recommendation only. Planning & Zoning Commission's motion was made by Curtis Waisath and seconded by Nicolas Nelson to recommend the city council deny the alley vacate request. Curtis, Nicolas and Rita voted yea and Dave Sanders voted

Planning & Zoning  
Commission cont.  
(Alley Vacate- Milan  
Zabka)

nay. Motion passed. Motion was made by Councilman Beeson and seconded by Councilman Lowe to consider the Planning and Zoning's recommendation and deny the vacate of the alley. All voted aye. Unanimous.

(Milan Zabka's Bed &  
Breakfast Conditional  
Use Permit)

It was clarified that the location of the proposed bed & breakfast is in the R-2 not R-3 zone. R-3 is a high density with some commercial conditional uses. The facts and findings of the Lava Planning & Zoning Commission recommended granting the permit with conditions. Councilman Beeson questioned if the applicant agrees with conditions. Milan stated that he had not seen them. A copy of the conditions are not mailed to the applicant until they are approved. City Clerk reported that a copy had been given to Kathryn DeMott. Milan stated that R.B., City Code Enforcement Officer, told him about building the fence. Motion was made by Councilman Lowe and seconded by Council member Smith approving Milan Zabka's bed and breakfast conditional use permit. Lowe-Aye, Vice-Aye, Smith-Aye, Beeson- Nay. Motion carried.

389 South Center  
Reclassification  
(Steven Beazer)

Letter from Steven Beazer seeking reclassification of his residence at 389 South Center from a duplex to a single family dwelling was considered. Tony Hobson, City Maintenance Supervisor, has completed inspection and verified use changed. Motion was made by Councilman Vice and seconded by Councilman Lowe approving the use change from a duplex to a single unit at 389 South Center Street. All voted aye. Unanimous.

Planning & Zoning  
Commission  
(Appointments/Terms)

Council member Smith reported that four commission seat terms expire in November and she would like the mayor and council's approval to proceed with contacting the current commissioners to see if any are interested in reappointment. Authorization was given to Council member Smith to proceed. Discussion followed about changing the terms of the commission so that four seats are not up for appointment every twelve years. City Clerk will talk with the attorney about changing the ordinance. Council member Smith will poll commissioners. Reports will be made at the November 25, 2008 special meeting. .

Passion Parties Local  
Option Tax Refund

Motion was made by Councilman Vice and seconded by Councilman Beeson authorizing the refund of \$14.70 to Passion Parties for reporting period September, 2008. All voted aye. Unanimous.

Funding Assistance  
Requests  
(American Legion Post  
21)

Request from Downey's American Legion Post 21 soliciting funds to purchase treats and supplies for troops was considered. Lava has a very active Post and the feeling was to support them. No funds are

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Funding Assistance Request cont.  
(American Legion Post 21)

budgeted unless the mayor is willing to spend funds from his discretionary budget. \$50 was mentioned. Lava's Legion and auxiliary are both very busy supporting similar projects. Mayor Burgin will talk to Mike Doyle in the morning to see if Lava has anything going on and bring it back up at the November 25<sup>th</sup> special meeting for a decision.

(United Way)

Mayor Burgin reported that he received a letter from Chubbuck Mayor Steve England soliciting donations for United Way. Mayor will go over the letter again and bring it back up at the November 25<sup>th</sup> special meeting.

(Cloud Seeding)

Letter from the Mayor of Rexburg soliciting support for the High Country cloud seeding efforts was considered. Councilman Vice has talked with Paula Jones, Three Rivers RC&D and Bannock County has been contributing funds for the last fourteen years. There are five generators in the south part of the county. Bannock, Power, Franklin and Caribou are all part of the effort. Motion was made by Councilman Vice and seconded by Councilman Beeson to not support the High Country cloud seeding efforts. All voted aye. Unanimous.

Projects  
(City Transportation Plan)

Special meeting with Forsgren Engineering to review the final City Transportation Plan draft was scheduled for November 25, 2008 at 5:30 p.m.

(Wastewater Aerator  
Engineer Contract)

Revised engineering contract draft was reviewed. Keller's are not willing to change #4 ownership clause for liability reasons as advised by city attorney. The contract requires the city to obtain permission prior to releasing documents and that any unauthorized use is the owners sole risk. Keller's is not willing to change #13. The engineer's placed language which makes the city solely responsible for health and safety issues on the construction site. It further stated, that safety is the sole responsibility of the contractor. Council feels that it is the contractor's obligation to be safe and provide proof of adequate liability insurance. The attorney also recommended a lump sum compensation on job completion. Keller's feel that it is customary for their industry to review and adjust rates on an annual basis and to leave room for those adjustments due to the length of construction projects. The city's attorney expects fixed rates in the contract. Motion was made by Councilman Vice and seconded by Councilman Lowe granting the mayor the authority to sign the contract with Keller Associates as

- Projects cont. written for the wastewater aerator project. All voted aye. Unanimous.
- (DEQ Wastewater Grant Agreement Amendment) Council was notified that the mayor had signed the wastewater grant agreement amendment to receive additional grant money to fund 50% of the inflow/infiltration project.
- (Lava Mobile Estates Waterline Extension Agreement Amendment) Engineer's wanted the city to turn the contract over to the owner of the Lava Mobile Estates to finish the project. Reasons and benefits unknown. The attorney has advised the city to pay Johnson's Excavation for the balance of the contract and refund the remaining funds of \$6,477.35 to the owner. Motion was made by Councilman Lowe and seconded by Council member Smith to follow the attorney's advise. All voted aye. Unanimous.
- (Visitor Information Signage) Letter was sent to ITD for directional tourist information signage to the South Bannock County Historical Center. Project was approved and signs have been ordered.
- (Wastewater Trunk Line Environmental Evaluation Proposals) Proposals were received from Wetland Consultants, Inc., North Wind and Rocky Mountain Environmental. J-U-B's consultant estimated \$1,400 for first phase. Councilman Vice reported that he talked with the Army Corp of Engineers and their workload does not allow time for completing determinations for municipalities. Councilman Vice can map wetlands but can't for the city due to conflict of interest. North Wind's proposal - Phase I \$1,200, Phase II to be determined, Schedule - begin December 1, field work December 11, then 30 days Corp approval. Councilman Vice mentioned that Corp approval normally takes 45 days. Wetland Consultants, Inc., proposal - Phase I \$950. Rocky Mountain Environmental's proposal - Phase I \$800, Schedule - On site this week. If the city can slip line the pipe, wetlands shouldn't be an issue. Motion was made by Councilman Lowe and seconded by Councilman Vice accepting the low bid, Rocky Mountain Environmental. All voted aye. Unanimous.
- (Miscellaneous - Minutes) Councilman Beeson feels that it is very important to get the minutes from the past council meeting so council knows what they said and did. City Clerk will have to work harder to get things caught up. Council understands that the clerk will have to find time to work weekends and nights. The assistant's help was questioned. There is a lot of things going on. The assistant is still learning. She is catching on. Clerk still spending some time reviewing work. The assistant managed things quite well when the clerk was out for medical leave. It's hard to concentrate and transcribe minutes with



Minutes of the November 13, 2008 Regular Council Meeting cont.

Project cont. interruptions. When the clerk came off leave, main focus was to  
(Miscellaneous - Minutes) get the budgetary caught up for auditing. The issue is  
understandable.

Discussion No discussion.

Motion was made by Councilman Lowe and seconded by Councilman Beeson to adjourn. All  
voted aye. Meeting adjourned at 7:35 p.m.

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Canda L. Dimick, City Clerk

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Marshall N. Burgin, Mayor