

CITY OF POCA TELLO, IDAHO
CITY COUNCIL AGENDA
CLARIFICATION MEETING AND
REGULAR CITY COUNCIL MEETING
JUNE 18, 2009

CLARIFICATION MEETING The City Council Agenda Clarification Meeting was called to order at 5:30 PM by Council President Gary Moore. Other Council members present were Roger Bray, Eva Johnson Nye, Robert Richway, and Brian Underwood. No motions, resolutions, orders, or ordinances were proposed. No vote was taken. Mayor Roger Chase and Council member Ron Frasure were excused.

REGULAR CITY COUNCIL MEETING

AGENDA ITEM NO. 1: The Regular City Council meeting was called to order at 6:00 PM by Council President Gary Moore. Council members present were Roger Bray, Eva Johnson Nye, Robert Richway, and Brian Underwood. Council member Ron Frasure arrived at 6:12 PM. Mayor Chase was excused.

Council President Moore led the audience in the pledge of allegiance.

AGENDA ITEM NO. 2: The invocation was given by Race Robinson of Christ's Love Vineyard.

AGENDA ITEM NO. 3: Council was asked to consider the following business items:

-MINUTES (a) Waive the oral reading of the minutes and approve the minutes from the City Council meeting for budget development on June 4, 2009, and the Executive Session of June 4, 2009.

-TREASURER'S REPORT (b) The Treasurer's Report for May showing cash and investments as of June 1, 2009, in the amount of \$25,455,375.61.

-HOUSING AUTHORITY OF POCA TELLO BOARD REAPPOINTMENT (c) Confirm the Mayor's reappointment of Francis Stamps to continue his service as a member of the Housing Authority Board of Directors. Mr. Stamps' term will begin June 23, 2009, and will expire June 23, 2014.

-LIBRARY BOARD REAPPOINTMENT (d) Confirm the Mayor's reappointment of Andy Guerra to continue his service as a member of the Library Board of Directors. Mr. Guerra's term will begin July 1, 2009, and will expire July 1, 2014.

-PLANNING AND ZONING COMMISSION REAPPOINTMENT (e) Confirm the Mayor's reappointment of Steven Long to continue his service as a member of the Planning and Zoning Commission. Mr. Long's term will begin June 21, 2009, and will expire June 21, 2013.

-COUNCIL DECISION (f) Adopt its decision of June 4, 2009, which amends a prior Council Decision of September 4, 2008, approving the final plat for Breezy Pointe, Division 2, which divides approximately 4.54 acres into thirteen lots, twelve of which are designated for residential single family, with the remaining lot designated as a common lot. The property is located on the southeast corner of Quinn Road and Philbin Road.

A motion was made by Mr. Bray, seconded by Mr. Richway, to approve the items on the consent agenda. Upon roll call, those voting in favor were Bray, Richway, Nye, Underwood, and Moore.

AGENDA ITEM NO. 4: Council President Moore announced there were COMMUNICATIONS AND PROCLAMATIONS no communications or proclamations.

AGENDA ITEM NO. 5: Council President Moore reminded the Council CALENDAR REVIEW of the July 2nd Regular City Council Meeting at 6:00 PM; and the Council Study Session on July 9th at 9:00 AM.

Mr. Moore announced that the Idaho State High School Rodeo takes place through June 20th at the Bannock County Fairgrounds; Riverfest will take place at Taysom/Rotary Park on June 20th from 2:00 PM to 9:00 PM; A Midsummer Night for The Zoo will take place on June 27th at the upper Ross Park amphitheater from 6:30 PM to 11:00 PM; the City Creek access gates will be closed until further notice due to heavy rain and mud; City offices will be closed July 3rd in observance of Independence Day, however, trash and recycling collection will remain on schedule; and the 4th of July holiday is coming up and there are areas of the city where fireworks are restricted.

AGENDA ITEM NO. 6: Council President Moore announced there were DISCUSSION ITEMS no discussion items from the audience.

AGENDA ITEM NO. 7: This time was set aside for the Council PUBLIC HEARING to hear comments from the public concerning -CDBG ANNUAL PERFORMANCE REPORT the 2008/2009 Community Development Block Grant (CDBG) Annual Performance Report. The report has been available for public review since June 2, 2009, when the CDBG Advisory Committee reviewed the draft and recommended City Council approval and authorization to forward the report to the U.S. Department of

Housing and Urban Development (HUD). Planning and Development Services staff recommended approval of the report. Following the Public Hearing Council may wish to endorse the final report and authorize staff to submit the report, including a summary of any public input to HUD on or before June 30, 2009.

Council President Moore opened the public hearing.

LeeAnn Dutton, Neighborhood and Community Services Division Manager, gave an overview of the projects which were made available through CDBG funds and in conjunction with Pocatello Neighborhood Housing. These projects include the following: 1) acquisition of three homes for rehabilitation; 2) addition of handicap accessibility to one home; 3) demolition of eight structures and construction of eight new homes for low to moderate income families; 4) acquisition of a 1st Avenue parking lot to be renovated for the warehouse district businesses; 5) assistance for renovations on 20 owner-occupied housing projects; 6) assistance to Aid for Friends, 7) rehabilitation assistance on nine sidewalk projects, 8) placement of a monument in the "Triangle" development through the Lasting Legacy group; and 9) additional projects as outlined in the report.

Council member Ron Frasure arrived at this time.

Mr. Richway stated that the CDBG Committee endorsed the Performance Report at their June 2, 2009, meeting.

Council President Moore announced that no written correspondence was received.

There being no further comments from the public, Council President Moore closed the public hearing.

A motion was made by Mr. Underwood, seconded by Mr. Frasure, to approve and endorse the 2008/2009 CDBG Annual Performance Final Report and authorize staff to submit the report, including a summary of any public input to HUD on or before June 30, 2009. Upon roll call, those voting in favor were Underwood, Frasure, Bray, Nye, Richway, and Moore.

AGENDA ITEM NO. 8: This time was set aside for the Council PUBLIC HEARING to hear comments from the public on proposed -CDBG ACTION PLANS reallocations in the 2007/2008, 2008/2009, REALLOCATIONS and 2009/2010 Community Development Block Grant (CDBG) Action Plans. The Council may wish to consider any and all comments received during the required public comment period which began May 19, 2009, and concludes with this hearing on the amendments and reallocations as recommended by the CDBG Advisory Committee at their meeting on May 19, 2009. Once approved, these amendments will govern the spending of two prior

program years and the current program year of the CDBG funding. The reallocations also reflect an additional 2009/2010 allocation of \$6,295.00 since the City's original award letter. Following the Public Hearing, Council may wish to endorse the recommended amendments and authorize staff to submit the amendments, including a summary of any public input to the U.S. Department of Housing and Urban Development (HUD) and authorize the Mayor's signature, subject to Legal Department approval, on all requisite contract documents with HUD and any sub recipients or sub contractors of these funds.

Council President Moore opened the public hearing.

LeeAnn Dutton, Neighborhood and Community Services Division Manager, stated that the amendments are a result of stimulus money received, budget reallocations, and neighborhood stabilization program funding received. The stimulus money opened up previously budgeted administrative funds.

Council President Moore announced that there was no written correspondence received regarding the proposal.

There being no further comments from the public, Council President Moore closed the public hearing.

A motion was made by Mr. Richway, seconded by Mrs. Nye, to approve and endorse the recommended amendments and authorize staff to submit the amendments, including a summary of any public input to HUD and authorize the Mayor's signature, subject to Legal Department approval, on all requisite contract documents with HUD and any sub recipients or sub contractors of these funds. Upon roll call, those voting in favor were Richway, Nye, Bray, Frasure, Underwood, and Moore.

AGENDA ITEM NO. 9: This time was set aside for the Council to
PUBLIC HEARING hear public comments on an appeal by Julie
-HEARING EXAMINER'S Taylor of New Life Preschool (mailing
DECISION APPEAL address: 1475 Satterfield Drive,
Pocatello ID 83201). Mrs. Taylor is
appealing the decision of the Hearing Examiner to deny a
Conditional Use Permit (CUP) to allow her to increase the number of
children for her in-home daycare from 12 to 20.

Council President Moore opened the public hearing.

Mrs. Taylor presented pictures of the home, backyard, and current available parking including additional parking across the street. Mrs. Taylor indicated the Hearing Examiner's main concern was having adequate parking for the daycare. She stated the home has two parking places inside the garage and room for three more vehicles in the driveway including two on-street parking spaces in

front of the home. Mrs. Taylor added that she has received offers from neighbors to allow parking at their homes which would equal 26 available parking places. Since Mrs. Taylor and her husband are the primary care providers, part-time employees are only necessary when the Taylor's need to be away from the facility. She feels that employee parking should not be an issue.

President Moore announced that correspondence had been received regarding the request. Rhonda Johnson, City Clerk, indicated that four letters were received in opposition to the request and three letters in support of the request. A petition with 40 signatures was also received in support of the request.

Matthew Lewis, Planning Division Manager, stated that New Life Preschool is zoned within a residential low density area and according to City Code, an in-home daycare located within a residential low density area is limited to 12 children. He added that with a CUP, the daycare may have up to 20 children if all other sections of City code can be met. Mr. Lewis reviewed the timeline regarding the application stating Mrs. Taylor's first application for a CUP was received on January 8, 2009. The CUP was approved by the Hearing Examiner with the condition that the driveway be reserved for unloading and loading of children with no on-street parking for the purpose of client parking. He stated that Mrs. Taylor appealed the conditions through a letter dated February 5, 2009, and the appeal was heard by the City Council on March 5, 2009. The City Council remanded the appeal back to Hearing Examiner Rick Fawcett for another public hearing on April 9, 2009. Mr. Lewis noted that the appeal was denied by the Hearing Examiner and is now before the Council. He stated that as of June 12, 2009, one phone call has been received by City staff regarding the appeal process. Mr. Lewis indicated that the New Life Daycare has been in operation at this residence since August 2003 without any concerns. He emphasized that City staff has applied ethical and legal processes to ensure fair treatment in this matter and accusations to the contrary have been taken very seriously.

In response to questions from Council, Mr. Lewis recommended that parking inside the garage be reserved only for the residents and employees. Previously, there were other items in the garage making it unavailable for the Taylor's personal vehicles.

In response to questions from Council, Dianne Brush, License Enforcement Officer, stated the ratio of 1 employee per 6 children would be in force if the daycare accepted infants. However, current fire codes would only allow a maximum of 3 or 4 infants in the daycare. Mrs. Brush stated the daycare would not be allowed to accept 20 infants at one time.

John Shaller, 1690 Satterfield Drive, stated that he is the owner of the property located at 1475 Satterfield Drive and is also Mrs.

Taylor's father. Mr. Shaller supports Mrs. Taylor's application for a CUP on the property. He stated that he formally opposes the need for nine (9) parking spaces and asked the Council to find the truth about the issues raised at the previous hearing.

Judy Boren, Idaho STARS resource officer, 315 West Center, Suite 101, stated she has visited Mrs. Taylor's daycare and supports her application to increase the number of children to 20. Ms. Boren feels it is a high quality daycare center with plenty of play areas, parking and sidewalks to safely accommodate 20 children.

Janelle Braswell, 4564 Sarah Loop, stated she has been a client of the daycare for five years and feels the property provides ample walkways and client parking. Ms. Braswell supports Mrs. Taylor's application to increase the number of children in her daycare.

Katie Brock, 619 South 11th Avenue, stated she is a part-time employee of the daycare and has worked at the daycare while attending college. Ms. Brock clarified that all parking at neighboring homes would be utilized by the daycare employees, and not by parents dropping off and picking up children.

Steve Davis, 1462 Satterfield, stated that he lives across the street and two houses away from the daycare and has submitted a letter offering two parking spots at his property for the employees.

In response to a question from Council, Mr. Davis stated that if necessary, he would be willing to enter into a contract stating the daycare could use two parking places at his home.

Vince Candelosi, 2434 South Fairway Drive, stated he had already submitted written correspondence regarding his opposition to the increase in number of children at the daycare. Mr. Candelosi stated that although Mr. and Mrs. Taylor are the primary daycare providers, in order to have two adults at the facility at all times, employees are necessary for transporting children. He was also concerned about the legality of having neighbors under contract for parking and the enforcement of such contracts. Mr. Candelosi felt that if the business is successful enough to expand to 20 children, it should also be moved to a commercially zoned neighborhood.

Deborah Anderson, 1470 Satterfield, stated she lives across the street from the daycare. She feels the issue of parking is not the only concern with the expansion of the daycare. She is concerned about the noise, congestion and how the business imposes on the neighbors. She stated that it is a business trying to expand in a residential area rather than moving to a commercial property.

Mrs. Taylor stated her husband's personal truck is no longer parked at their residence and has been moved to a parking spot offered to them by the Richins family. The garage houses two cars belonging to the Taylors and there is one more space available for employee parking, if necessary. She stated that there are three parking places in the driveway for parents dropping off and picking up children.

In response to questions from Council, Mrs. Taylor stated the daycare currently employs two part-time employees. The employees work whenever she or Mr. Taylor are unable to be at the daycare. She added that the number of children in her care varies throughout the year and it could be quite some time before the daycare provides care for 20 children at one time. Mrs. Taylor added that it would be highly unlikely for 20 cars to show up at the same time to pick up children, as many parents have multiple children at the daycare.

Dean Tranmer, City Attorney, clarified that Hearing Examiner decisions are not officially available until the decision has been recorded with the County and the letter of appeal was filed within the appropriate time parameters.

There being no further public comments, Council President Moore closed the public hearing.

A motion was made by Mr. Underwood, seconded by Mr. Bray, to accept the recommendation of the Hearing Examiner and deny the appeal.

Mr. Underwood added that the issue at hand is not about her ability to handle another eight children or if she is a good daycare provider, but rather the issue of complying with existing zoning ordinances.

Mr. Bray stated that there is no question that it is a great daycare and has many supporters within the community. The issue is that the code is in place to protect current and future homeowners. He feels that allowing 12 children in a home is sufficient to help a fledgling business get started but if it grows beyond 12, expansion to a commercial property is necessary.

Mr. Frasure clarified that Mrs. Taylor has followed the legal process to obtain a CUP.

A motion was made by Mrs. Nye, seconded by Mr. Frasure, to overturn the Hearing Examiner's decision and grant the request for a Conditional Use Permit to allow Mrs. Taylor to increase the number of children in the daycare to 20, with the condition that a contract, approved by the Legal Department, be enacted with an adjoining neighbor to allow additional parking on the neighbor's

property and that the Taylors remain the primary owners/operators of the daycare.

Mr. Richway asked that Mrs. Nye's motion be amended to overturn the Hearing Examiner's decision and approve the daycare expansion to 20 children with the condition that three off-street parking spaces outside the garage are maintained for customer loading and unloading only and that the current residents, Mr. and Mrs. Taylor, will remain the owners/operators of the daycare. The amendment was accepted by Mrs. Nye and Mr. Frasure.

Following additional discussion a vote was taken on Mrs. Nye's amended motion. Upon roll call, those voting in favor were Nye, Frasure and Richway. Those voting in opposition were Bray, Underwood, and Moore. The motion failed.

Mr. Underwood's motion was voted upon at this time. Upon roll call, those voting in favor were Underwood, Bray, and Moore. Those voting in opposition were Frasure, Nye, and Richway. The motion failed.

A motion was made by Mr. Frasure to postpone the decision until Mayor Chase returned.

At the request of the Council, Dean Tranmer, City Attorney, asked Mr. Lewis if the appropriate time frame can be met if the item is postponed.

Mr. Lewis stated he would have to check the codes to see what the timelines are.

Mr. Frasure reiterated his motion to postpone the decision until Mayor Chase can be in attendance at the meeting. The motion was seconded by Mrs. Nye.

Council President Moore called a recess at 7:56 PM to allow staff time to research the amount of time the Council has to render a decision on an appeal from the Hearing Examiner.

Council President Moore reconvened the meeting at 8:13 PM.

Council President Moore reminded the Council they had a motion on the floor about postponing the decision of the appeal.

Mr. Frasure withdrew the motion and the withdrawal was accepted by Mrs. Nye who had seconded the motion.

A motion was made by Mrs. Nye, seconded by Mr. Richway, to overturn the Hearing Examiner's decision and approve the daycare expansion to 16 children with the condition that three off-street parking spaces outside the garage are maintained for customer loading and unloading only and that the current residents, Mr. and Mrs. Taylor,

will remain the owners/operators of the daycare and that the CUP will remain in effect as long as the residence is occupied by the Taylors and that the Decision be placed in the appropriate Council Decision format.

Following discussion on Mrs. Nye's motion a vote was taken. Upon roll call, those voting in favor were Nye, Richway, Bray, and Frasure. Those voting in opposition were Underwood and Moore. The motion passed.

AGENDA ITEM NO. 10: Council was asked to consider a EXCEPTION REQUEST request from Pocatello Firefighters from -FILL THE BOOT Local 187 for an exception to ordinances or laws that would prevent the group from gathering funds, for the Muscular Dystrophy Association "Fill the Boot" Fundraiser, on the public rights-of-way at Oak and Yellowstone on August 22, 2009, from 10:00 AM to 6:00 PM. Additionally, they requested an exception from laws or ordinances that restrict pedestrian travel into the public right-of-way. Council approval should be subject to the Firefighters acquiring a Special Event Permit from the Idaho Transportation Department.

A motion was made by Mr. Underwood, seconded by Mrs. Nye, to approve the exception request and allow the group to gather funds for the Muscular Dystrophy Association "Fill the Boot" Fundraiser on August 22, 2009 subject to the Firefighters acquiring a Special Event Permit from the Idaho Transportation Department. Upon roll call, those voting in favor were Underwood, Nye, Bray, Frasure, Richway, and Moore.

AGENDA ITEM NO. 11: Council was asked to consider a lease LEASE AGREEMENT fifteen year lease, with renewable option -AUDITORIUM DISTRICT: of the Fort Hall Replica, Pocatello Junction, and the surrounding area to the Pocatello/Chubbuck Auditorium District, Inc. for \$1.00 per year. The District would be responsible to operate, maintain, make improvements and market these facilities during the term of the lease and would be responsible for all of the associated operation costs. The District would be required to provide liability insurance, naming the City as an additional insured. If the Council approves the Lease Agreement it should be subject to Legal Department approval.

In response to a question from Council, Jackie Alvord, Committee Chair Person for the Fort Hall Replica Commission, stated the Commission strongly supports the proposal and will continue to act as an informational Committee, if the Auditorium District so chooses.

A motion was made by Mr. Bray, seconded by Mr. Richway, to approve, subject to Legal Department approval, a fifteen year lease, with renewable option, of the Fort Hall Replica, Pocatello Junction, and the surrounding area to the Pocatello/Chubbuck Auditorium District, Inc. for \$1.00 per year.

Mrs. Nye recused herself from voting upon the motion stating her husband's involvement with the Auditorium District would constitute a conflict of interest.

Mr. Bray's motion was voted upon at this time. Upon roll call, those voting in favor were Bray, Richway, Frasure, Underwood, and Moore.

AGENDA ITEM NO. 12: Council may wish to approve a Water Lease Agreement, subject to Idaho Power and Legal Department approval, and authorize the Mayor to enter into said Water Lease Agreement with the Idaho Power Company, wherein the City agrees to lease up to 20,000 acre feet of the City's storage water in Palisades Reservoir for the sum of \$25.00 per acre foot, which lease shall expire on October 31, 2009.

A motion was made by Mr. Bray, seconded by Mr. Underwood, to approve a Water Lease Agreement with the Idaho Power Company, subject to Legal Department approval, to lease up to 20,000 acre feet of the City's storage water in the Palisades Reservoir. Upon roll call, those voting in favor were Bray, Underwood, Frasure, Nye, Richway, and Moore.

AGENDA ITEM NO. 13: Council was asked to approve a Memorandum of Understanding (MOU) to allow the Pocatello Police Department to apply with the Bannock County Sheriff's Office for an additional allocation in the 2009 Byrne Grant. The grant would be managed by the Sheriff's Office and does not require matching funds. The funds are to be used by law enforcement agencies to provide technical assistance, training, equipment, etc. The City of Pocatello's share would be \$33,888.40.

A motion was made by Mr. Frasure, seconded by Mrs. Nye, to approve a MOU, subject to Legal Department approval, to allow the Pocatello Police Department to apply with the Bannock County Sheriff's Office for an additional allocation in the 2009 Byrne Grant. Upon roll call, those voting in favor were Frasure, Nye, Bray, Richway, Underwood, and Moore.

AGENDA ITEM NO. 14: Council was asked to authorize, subject to Legal Department approval, execution of an amendment to an existing contract with WILLIAMS ENGINEERING

Williams Engineering, Inc. for an additional amount not to exceed \$100,000.00 to continue work to recertify the Portneuf River Flood Control Levees.

A motion was made by Mr. Richway, seconded by Mr. Bray, to approve, subject to Legal Department approval, an amendment for an amount not to exceed \$100,000.00 to an existing contract with Williams Engineering, Inc. Upon roll call, those voting in favor were Richway, Bray, Frasure, Nye, Underwood, and Moore.

AGENDA ITEM NO. 15: Council was asked to approve a Memorandum of Understanding (MOU), for a term of five years with United Way of Southeastern Idaho, the Friends of the Marshall Public Library, the Marshall Public Library Board of Trustees, and the City of Pocatello regarding a partnership surrounding the use of a Winnebago vehicle as a bookmobile.

Mike Doellman, Marshall Public Library Director, stated the original MOU was a 5-year agreement, to be renewed upon expiration. Mr. Doellman added that officials with the Winnebago Company have verified that the average useful life of their product is 20 years. He stated that the MOU should include the phrase "this agreement shall be in effect for the useful life of the vehicle from the final date of signing and will be reviewed and reconsidered at that time." This addition would allow the partnership to be dissolved if the vehicle becomes unusable at any time.

A motion was made by Mr. Bray, seconded by Mr. Richway, to approve a MOU, subject to Legal Department approval, for a term of the useful life of the vehicle with United Way of Southeastern Idaho, the Friends of the Marshall Public Library, and the Marshall Public Library Board of Trustees regarding the use of a Winnebago vehicle as a bookmobile. Upon roll call, those voting in favor were Bray, Richway, Frasure, Nye, Underwood, and Moore.

AGENDA ITEM NO. 16: Council was asked to consider an ordinance repealing the revenue allocation provisions of the East Center Street Urban Renewal Area, effective tax year 2009, and providing for notification of same to the taxing entities.

Dean Tranmer, City Attorney, read the ordinance by title.

Council President Moore declared the third and final reading of the ordinance repealing the revenue allocation provisions of the East Center Street Urban Renewal Area, effective tax year 2009, and providing for notification of same to the taxing entities. Council President Moore asked "Shall the ordinance pass?" Upon roll call, those voting in favor were Bray, Frasure, Nye, Richway, Underwood,

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and Moore. Council President Moore declared the ordinance and summary sheet passed, that it be numbered 2868 and be submitted to the Idaho State Journal for publication.

There being no further business, Council President Moore adjourned the meeting at 8:33 PM.

APPROVED BY:

ROGER W. CHASE, MAYOR

ATTEST:

RHONDA L. JOHNSON, MMC, CITY CLERK

PREPARED BY:

KONNI R. MORGAN, ADMIN. ASSISTANT