

**CITY OF HAYDEN LAKE
MINUTES OF REGULAR MEETING
MAY 3, 2011**

CALL TO ORDER

Mayor Morris called the meeting of the Hayden Lake City Council to order at 6:00 p.m. Councilmen present were Tom Gorman, Todd Walker, Bob Grant and Chris Beck. Larry Comer, Attorney Pete Bredeson and Dick Pelton were present as representatives of the council. City Clerk Lynn Hagman recorded the minutes of the meeting.

Visitors present were William Bentz, Bob Rova, Jim English, Les Hintz and Darrell Haarr.

Mayor Morris led in the pledge of allegiance.

AGENDA

Councilman Walker moved to amend the agenda to take the Hayden Lake Country Club fence application off the table and placed on this agenda and then to approve the amended agenda. Councilman Beck seconded the motion. The motion carried.

Councilman Walker then moved to approve the consent agenda including the minutes of April 19, 2011 and the invoices for payment. Councilman Grant seconded the motion. The motion carried.

CAPITAL IMPROVEMENT PLAN

Larry Comer addressed the council regarding the cities capital improvement plan update. Mr. Comer discussed the priorities and the costs associated with each. Miles Ave. project, shared with Lakes Highway District is the first priority and Strahorn Rd. is listed as the second highest priority. Mr. Comer discussed the possibility of adding Strahorn Rd. to the Miles Ave. project and stated that this is not going to work. The response he received back from KKAT was not favorable. This plan has been updated with current costs. Mr. Comer presented a map of the Miles Ave. ratio between the City and LHD for percentage of right of way. Councilman Grant questioned the lay of the road and Mr. Comer stated that this is a survey from the centerline and it is known that where the road is paved is not correct.

CONDITION MODIFICATION FOR FALLS AT HAYDEN

Mr. Darrell Haarr addressed the council on this issue. Mr. Haarr informed the council that the infrastructure is in and the vegetation is established. Mr. Haarr is asking to remove this restriction for the homeowner to be able to put in foundations during anytime of the year. The restriction prohibits any site disturbance from October 15th through May 1st. Each lot will be required to have a storm water permit drafted by a design professional. The drainage swales are in and working fine. The new easement is now handling excess storm water around lots 9 and 10 but has not been recorded at the county yet.

Councilman Walker agreed that the new larger easement will handle the storm water at the south end of the property which was a concern previously. **Councilman Gorman moved to send a response letter with approval of lifting the restriction.**

Councilman Grant seconded the motion. A roll call vote showed; Councilman Gorman, “aye”, Councilman Walker, “aye”, Councilman Grant, “aye” and Councilman Beck “abstained”. The motion carried.

GIBSON RD. NUISANCE

Attorney Bredeson informed the council that the letter sent to Mr. Parry regarding his home at 10181 Gibson Rd. is now over 30 days past. The next step will be a certified letter from the Code Enforcement Officer giving 30 days to respond. Councilman Gorman requested time to try to call the Parry's and find out what is happening with the insurance issue on the house. Council agreed and this issue will be placed on the next agenda.

HAYDEN LAKE COUNTRY CLUB FENCE APPLICATION

Larry Comer discussed the survey that was done for the right of way as mentioned in the annexation agreement. The agreement was to transfer the right of way and this has never been done. Mr. Comer has determined the right of way and is prepared to put it in legal description form for recording. Mr. Comer stated that the widths of the roads were clearly identified in the agreement; however, Bozanta was only shown in width and no termination point. The city needs to tell Welch Comer Engineers where Bozanta ends so they can include this in the deed.

Mayor Morris stated that this matter needs to be resolved. Attorney Bredeson reminded the council that the Hayden Lake Country Club offered a termination point if the city would agree to it and approve the fence permit. Attorney Bredeson suggested that the city could have a legal opinion written. Councilman Grant suggested having the State Attorney General's office look at this issue and Attorney Bredeson could write the letter and ask for their opinion. Attorney Bredeson informed the council that the Attorney General's office will need facts and the Attorney General's opinion is only good until a court overrules it. Councilman Gorman asked if the Attorney General's opinion is binding. Attorney Bredeson replied yes until it is overturned.

Councilman Beck informed the council that he and Councilman Gorman are stockholders in the Hayden Lake Country Club and asked if this would be a conflict of interest and should they recuse themselves from any discussion or vote on this matter. Attorney Bredeson found no monetary benefit to both Councilmen and felt there wasn't any need for them to recuse themselves from discussions or voting on this matter.

William Bentz spoke to the council and informed them that he had done research back to 1937 on this subject and would like to share his information if it goes to the Attorney General. Mr. Bentz stated that Lakes Highway District maintained Bozanta in the past, prior to 1971 because it was their road. In the 1970's there was some litigation over this road which concluded with being dismissed by the judge. The signs placed on the road by the Country Club that says “no trespassing”.

Mr. Bob Rova informed the council that he has used this lake access before to launch his canoe and he always thought it was a public access. Mr. Rova asked if they could put a time restriction on the access to regulate when it is used by the public.

Mr. Jim English, representing the Country Club, stated that he feels the city has not shown where they have ever maintained this road. There is no doubt in his mind that this property belongs to the Country Club and he feels it is wrong for the city to claim this property. Even if the city gets an opinion from the Attorney General's office, the Country Club will not pay any attention to it anyway according to Mr. English.

Councilman Gorman stated that there is no disagreement as to the Country Club owning the property. It is the easement that is in question. Mr. English stated that prescriptive easements are a problem and hard to prove. Councilman Walker informed Mr. English that there is a sewer easement on Bozanta as well. Mr. Comer discussed the right of way survey with Mr. English and Councilman Grant questioned if all of the Country Club grounds were included in the survey. Mr. Comer replied that they were. All of the spurs off Bozanta were surveyed.

William Bentz addressed the council and stated that the public is interested in the lake access and the city is looking out for the people. If the city is spending money to maintain this property, then the citizens should be able to use it.

Councilman Grant moved to send a letter to the Attorney General's office for an opinion. This motion died for lack of a second. Councilman Walker informed the council and the public that the city only annexed this property in 2000 and had nothing to do with the maintenance of the road before then. Councilman Beck felt that the city does not belong in this fight. The citizens should be fighting this battle. Mayor Morris recommended legal counsel form a legal opinion as to whether there is a prescriptive easement for the right of way or if it had been abandoned. Larry Comer informed the council that his office could do a title research but the prescriptive easement is a legal question.

Councilman Grant questioned the cost of Attorney Bredesons' legal opinion and the validity of between the Attorney General's opinion and Attorney Bredeson's. Councilman Grant felt that the Attorney General's opinion would also save the city money. Mr. English informed the council that the Country Club will dispute any opinion that says there is a prescriptive easement. Use by the public on this property has been sporadic. Councilman Gorman agrees with Councilman Grant in that this issue could become very public and the council needs to feel that they have done due diligence and be on solid ground when a final decision is made. Councilman Gorman felt that it made sense to get a legal opinion, however, Councilman Gorman also feels that the city should not be involved in this dispute.

Attorney Bredeson volunteered to do the legal opinion at one half his normal rates in order to have this matter resolved. **Councilman Walker moved to direct Attorney Bredeson to form a legal opinion as to whether or not there is a prescriptive easement or if there was an abandonment of this property. Councilman Gorman seconded the motion.** Councilman Grant stated that his suggestion to go to the Attorney General was just a cost effective manner and questioned why Attorney Bredeson would do a legal opinion versus sending this issue to the Attorney General. Councilman Gorman felt the cost would be comparable because there would be expense in putting the facts together for the Attorney General's opinion. Mr. English asked whose facts the city will be using.

Councilman Beck stated that whatever opinion the city gets, we will still have the same fight. The council either needs to accept the letter from the Country Club, defining the termination point of Bozanta and grant the fence permit or we choose to take on this fight on behalf of the city.

Mayor Morris asked for a vote on the motion to have Attorney Bredeson form a legal opinion on this matter. The vote showed two in favor and two against. Mayor Morris voted as the tie breaker and the vote was then three to two in favor of legal counsel forming the legal opinion. The motion carried.

Mayor Morris then recommended that the Attorney General's office be notified also for an opinion. **Councilman Gorman moved to accept the Mayor's recommendation of contacting the Attorney General's office. Councilman Grant seconded the motion. The vote showed two in favor and two against. Mayor Morris voted as the tie breaker and the vote then showed three in favor and two against for including the Attorney General's office for an opinion. The motion carried.**

MEETING DATE

Mayor Morris informed the council that there will be an election held at city hall on the 17th of May and the council meeting will need to be rescheduled. The new meeting date will be Monday, May 16th at 6:00 p.m.

NORTH KOOTENAI WATER DISTRICT

Councilman Gorman informed the council that he has talked with Necia from Welch Comer who stated that there were no problems with the Pt. Hayden project and it is now complete. North Kootenai Water District has submitted a letter to the City of Hayden Lake for payment of the cities share. Councilman Grant voiced his concerns with road cuts where the new meter sets were placed. The rectangle areas are low. Councilman Grant also stated that there a closed culvert on Pt. Hayden which is causing drainage problems. Councilman Gorman informed the council that the homeowner, where the drainage was bad, is filling in the area with rock and this is not a North Kootenai Water District problem. Councilman Gorman will speak with Necia again regarding the problems and asked the council to hold payment until then. **Councilman Grant moved to continue the payment request to the next meeting. Councilman Gorman seconded the motion. The motion carried.**

RESOLUTION 102

Resolution 102, a resolution adopting the capital improvement plan update was discussed briefly. **Councilman Grant moved to approve Resolution 102, seconded by Councilman Gorman. The motion carried.**

ORDINANCE 246

Ordinance 246, an ordinance regarding placement of backfill and the compaction of materials was discussed. **Councilman Gorman moved to adopt Ordinance 246 by reading of title only. Councilman Walker seconded the motion. A roll call vote showed; Councilman Gorman, "aye", Councilman Walker, "aye", Councilman Grant, "aye" and Councilman Beck, "aye". The motion carried.**

Mayor Morris read Ordinance 246 by Title. **Councilman Gorman moved to adopt Ordinance 246 under suspension of the rule requiring the reading of the ordinance on three separate occasions. Councilman Walker seconded the motion. A roll call vote was taken; Councilman Walker, "aye", Councilman Grant, "aye", Councilman Beck, "aye" and Councilman Gorman, "aye". The motion carried.**

Councilman Grant then moved to adopt Ordinance 246 as presented, seconded by Councilman Beck. The motion carried.

Councilman Beck moved to approve the summary of Ordinance 246 for publication. Councilman Gorman seconded the motion. The motion carried.

PLANNING AND ZONING

Councilman Walker gave the council an update on the Hayden Lake dam. There is a concern of flooding but so far it is working like it should. Hayden Lake Recreational Water and Sewer District has mobilized a new pump station so the sewer danger is gone.

STREETS

Councilman Gorman informed the council that he had contacted the Chipmaster Co. for a quote on chip sealing Pt. Hayden but had no response. Councilman Gorman will also have Chipmaster look at the job that was done last year on Lakeview Dr. and Dakota Ave. It did not hold very well. This issue will be placed on the next agenda.

Councilman Gorman discussed the drainage problem in Pt. Hayden and suggested hiring Peck and Peck to re-create the ditch. Councilman Walker agrees. Councilman Grant asked if Necia, from Welch Comer could look at the ditch when she is in that area to inspect the Pt. Hayden project. Councilman Gorman will speak with Necia. Councilman Beck felt that before hiring someone to just fix the ditch, the city needs to look at all of the bad pot holes in the city and have all of the street maintenance done at the same time.

Mayor Morris drove around the city and informed the council that she did not feel the entire city needed to have striping done. Councilman Gorman felt that the striping should wait until the chip sealing is done. Councilman Grant suggested Chief Johnson drive the city streets and make a list of where he thinks striping should be done.

Potholes on Strahorn were discussed and council felt that there needs to be a decision made as to what will be done with Strahorn Rd. regarding the one way. Councilman Grant suggested when the road cut in front of Mr. White's home in Pt. Hayden is fixed, that same contractor should do all of the potholes in the city as well. This may save the city some money. Councilman Beck suggested the potholes be identified first and then put specs together and get bids on the work.

Councilman Beck informed the council that Sean, at the City of Hayden is working on a plan for Strahorn Rd. Councilman Gorman felt that the city cannot wait any longer for the City of Hayden's plan. A decision needs to be made on whether this will remain a one way or not and then a plan needs to be made for how to fix this street. Mayor Morris asked Mr. Comer if it was certain that Strahorn Rd. could not be put in with the Miles Ave. project. Mr. Comer said it would not work. Mr. Comer described Strahorn Rd. as 30' from the center line. The trees in the right of way belong to the property owner.

Mr. Comer discussed steps to be taken to start on Strahorn Rd. Council Grant questioned is the Hayden Lake Country Club was ever asked to share in the cost of surveys that were done for the annexation agreement right of way issue. Attorney Bredeson said they declined to participate in the cost.

Morris Rd. drainage issue was discussed and Mayor Morris stated that after the street was swept the drainage is good now.

ADJOURN

With no further business before the council, at 8:05 p.m. Councilman Grant moved to adjourn, seconded by Councilman Walker. The motion carried.

Nancy E. Morris, MAYOR

Lynn M. Hagman, CITY CLERK