



**Twin Falls City Council
Minutes**

Monday, February 11, 2019, 5:00 PM

City Council Chambers
203 Main Avenue East- Twin Falls, Idaho

1) CALL MEETING TO ORDER/CONFIRMATION OF QUORUM

Present: Mayor Shawn Barigar, Vice Mayor Nikki Boyd, Council Members Suzanne Hawkins, Chris Talkington, Greg Lanting, Christopher Reid, & Ruth Pierce.

Absent: None

Staff Present: City Manager Travis Rothweiler, Deputy City Managers Mitch Humble & Brian Pike, Fire Chief Les Kenworthy, Assistant City Engineer Troy Vitek, City Attorney Shayne Nope, Public Information Officer Josh Palmer, Engineer Jason Brown, Police Captain Matt Hicks, Human Resource Director Gretchen Scott, Parks and Recreation Director Wendy Davis, Help Desk Technician Kim Hafer, Planning and Zoning Administrative Assistant Kelli Ebersole.

Mayor Barigar called the meeting to order at 5:01 pm. A quorum was present.

2) PLEDGE OF ALLEGIANCE

Mayor Barigar invited all present, who wished, to recite the Pledge of Allegiance to the Flag.

3) PROCLAMATIONS: None

4) GENERAL PUBLIC INPUT

Citizen Robert Showalter, Twin Falls, expressed a concern over the water company charging him an \$85 deposit to connect utilities, and inquired who gets the interest off the deposit.

Mayor Barigar deferred to City Manager Rothweiler.

City Manager Rothweiler explained the deposit policy for renters in Twin Falls. The fee has never been challenged to his knowledge. \$75 of deposit is to be reimbursed after first year. The interest off of any deposit is put into the water fund. State code dictates how the city can use that money. City Manager Rothweiler took citizens information and will get him further information.

5) CONSENT CALENDAR

MOTION: Council member Reid moved to approve the Consent Calendar, as presented. **Vice Mayor Nikki Boyd** seconded the motion. Roll call vote showed all members present voted in favor of the motion. 7 to 0.

- a) **ACTION ITEM:** Request to approve the Accounts Payable for January 31 thru February 6, 2019.
- b) **ACTION ITEM:** Request to approve Alcohol License for Emma's Cafe LLC located at 669 Blue Lakes Blvd, Twin Falls, ID 83301.
- c) **ACTION ITEM:** Approval of Findings of Fact and Conclusions of Law for: Gem State Dairy Products
City of Twin Falls, Public Works Department

6) ITEMS OF CONSIDERATION

- a) **PRESENTATION:** The Twin Falls School District is pursuing a renewal and slight increase of the Supplemental Levy, and it will discuss how the district came to the decision and its impact on students, staff, and taxpayers if the levy is approved.

Dr. Brady Dickinson made a presentation for The Twin Falls School District who is pursuing a renewal and slight increase of the Supplemental Levy, and will discuss how the district came to the decision and its impact on students, staff, and taxpayers if the levy is approved.

Dr. Dickinson encouraged people get out to vote on March 12 as the average voter percentage on school bills is only 8% of the voting population.

Twin Falls School District did not have a supplemental levy until 2012. Idaho is one of the lowest funded states in nation, with Twin Falls School District being one of the lowest funded districts in state.

He reviewed the benefits of the levy and the programs the levy would fund. The proposed levy is \$10,000,000 over two years (\$5,000,000 each year)

He reviewed how the levy would affect taxpayers through property tax.

Discussion ensued on the following:

Council Member Talkington: Stated the school district is doing an exceptional job.

Council Member Hawkins: Thanked Dr. Dickinson for his presentation. She asked about the talks in Boise for funding of the schools.

Dr. Dickinson: Stated the conversation is fluid.

Council Member Lanting: Asked how many days could the district fund if there was no state assistance.

Dr. Dickinson: Stated the district would be able to maintain for one week.

Mayor Barigar thanked Dr. Dickinson for his presentation.

- b) **ACTION ITEM:** Request to Appeal Improvement Reimbursement Commissions approval of Broadmoor application.

The Improvement Reimbursement Commission approved the pressurized irrigation amount of \$35,764.31. The findings are being appealed to the City Council per the resolution.

The Improvement Reimbursement Committee's decision was based on City Resolution 2017-13 (resolution).

Mayor Barigar stated in an effort to help the meeting run more smoothly encouraged both parties to limit their arguments to the issues presented. City staff will first introduce the issue. The Appellant will then have 15 minutes to present their case. Next, the Respondent will have 15 minutes to respond. Then, the Appellant will have 5 minutes for rebuttal. Finally, the City Council will ask questions of either party.

Vice Mayor Boyd recused herself from this item.

City Engineer Vitek presented the Broadmoor Subdivision received its preliminary plat approval on July 10, 2007, as a whole subdivision. On October 27, 2015, the final plat was recorded which included both north and south portions as shown on the attached final plat document. Part of the requirement to receive approval to record the final plat is to demonstrate that the subdivision can receive water, sewer, PI, storm drainage, parks requirement, and roadway development to support subdividing. The original developer submitted a full set of construction plans that met the requirements. At the time of construction the Perrine Point pressure irrigation station was not developed as originally proposed and a new location was proposed to hook into an existing station known as the Riverhawk PI station. This change was required by the City to meet City Code section 7-8-4

(E) that reads " (E) Notwithstanding the foregoing, the use of the city's potable water supply as the primary

source of irrigation water in all new developments shall be prohibited. For purposes of this subsection, the term "new development" means any new subdivision or ZDA, or any development of any parcel of land of two (2) acres or larger that is not part of a subdivision or ZDA. (Ord. 3082, 12-8-2014)". On February 1, 2016 a proposed plan of the offsite PI extension was delivered to the City and eventually approved. On March 4, 2016 the construction plans were approved for the entire Subdivision and later on June 22, 2016 a revised phasing construction plan was approved for everything south of Ridgeway Drive (Jade Portion). Subsequent to the approval of the Final Plat of the Broadmoor Subdivision, the original developer (Rusmor) sold to Gerald Martens the northerly portion of the Broadmoor Subdivision, and later sold the remaining southerly portion of the Broadmoor Subdivision to Jade Development. Gerald Martens began development of the northerly portion of the Broadmoor Subdivision and extended the pressure irrigation distribution south to the southerly portion of Broadmoor Subdivision. Gerald Martens is the "initial developer" as defined in the Improvement Reimbursement Resolution. See page 2 of the Resolution, attached.

The Improvement Reimbursement Resolution was passed to allow compensation for water distribution system, waste water collection system, transportation system, pressure irrigation pump stations, PI distribution systems, and Twin Falls Canal Company water delivery system, made by an initial developer to be compensated by a subsequent developer who benefits from the improvement. The resolution details how those reimbursements are to be made and responsibilities. No provisions are included in this resolution with regards to parks or storm water since the design of those improvements are meant to be only for the subdivision and not benefiting adjacent properties.

Broadmoor Subdivision has constructed an offsite Pressure irrigation distribution system that serves both the north and south developments. This meets the requirements of the reimbursement resolution PI section. See pages 17-21 of the Resolution. It is the duty of the Improvement Reimbursement Commission to determine proper compensation, in a manner described in the Resolution.

City staff recommended to the Reimbursement Commission approval of the application for reimbursement for the offsite pressurized irrigation improvements totaling \$35,764.31 to Jade development. The storm water retention improvements and park area are not in meeting with the Resolution and was recommended NOT to be included with the reimbursement request. A third party reviewer, hired by the applicant, reviewed the application stating in their opinion the application met the intent of the resolution.

The reimbursement commission heard the application on November 29, 2018 and voted in favor of reimbursement for the offsite pressurized irrigation system for \$35,764.31 per staff recommendation. Jade Development has provided a bond per the resolution, currently being held by a Title Company, so that they may continue receiving certificates of occupancy for projects already under construction while this issue is being resolved. An appeal has been delivered to the City by Hawley Troxell (attorney's for Jade Development) and Spink Butler, LLP (attorney for Gerald Martens) both are attached.

The City of Twin Falls is a facilitator of the process of reimbursements. The City's responsibility is to determine the area of benefit, place the approved information into a GIS system, and not issue permits until the financial obligations are satisfied. Staff recommended to the Improvement Reimbursement Commission to approve the pressurized irrigation portion of the reimbursement request due to both parties utilizing the utility and it meeting with the Pressurized Irrigation requirements of the resolution.

The City recognizes there is a Purchase and Sale agreement on the property however the commissions' role is not to review private agreements but uphold the resolution as it reads.

There are two issues on appeal:

- 1) Is Gerald Martens eligible for reimbursement based on the language of the resolution and if so,
- 2) Was the amount calculated for reimbursement in accordance with the Resolution?

Questions from Council:

Council Member Talkington: asked City Attorney Nope why this isn't being decided in court between the parties.

City Attorney Nope: stated the IRC was given authority to decide whether Gerald Martens was entitled to the reimbursement and the amount to be reimbursed. City Council's responsibility is to decide whether the IRC followed proper procedure to have the escrow account released, the escrow company need a written

decision by Council and a court decision needs to be made.

Council Member Hawkins: asked when this is over, should the resolution be reviewed.

City Attorney Nope: stated that can be done, but should not come into this decision.

Applicant Presentation:

Attorney Lynette Davis, for Jade Development, developing southern portion of Broadmoor Subdivision. She presented Jade Development's appeal.

Jade Development does not believe reimbursement is owed to Gerald Martens due to the sales agreement between Jade Development and Rusmoor.

Jade Development is asking for IRC decision to be reversed or vacated.

Respondent Dave Thibault, EHM Engineers, presented EHM's reimbursement application process. Mr. Thibault believes the IRC made a fair and correct decision regarding the reimbursement.

Attorney Tara Martens for Gerald Martens presented the response to Jade Development's appeal. No evidence of premium paid by Jade Development or discount paid by Mr. Martens at time of land purchase. She believes this is a precise reimbursement for the pressurized irrigation system. No evidence that Mr. Martens waived his rights as "initial developer".

CC & R's addresses reimbursement.

Attorney Davis responded to respondent's presentation. No invoices or testing results in Public Records Request and is not in city's possession. She does not believe there was a thorough review done by third party.

She addressed alternative reimbursement with letter from Joe Russell. Addressed commissions understanding and what they voted on (fair and equitable). Is there a conflict of interest (Mr. Wills and Mr. Martens)

Discussion ensued on the following:

Mayor Barigar: asked City Engineer Vitek to clarify process. When did city send letter of acceptance of pressurized irrigation system?

Assistant City Engineer Vitek: stated day before IRC hearing, November 28. He explained the city's building permit process.

Council member Hawkins: asked how acceptance ties into 90 day window to apply for reimbursement and what it means.

Assistant City Engineer Vitek: stated 90 days from formal acceptance and Mr. Martens applied for reimbursement before the formal acceptance.

Mayor Barigar: asked for more clarification on the 90 day window.

Assistant City Engineer Vitek: stated application was received by the Engineering office on September 28.

Mayor Barigar: asked if city received all of the information required. Are receipts part of application process?

Assistant City Engineer Vitek: stated the city did not receive receipts, but they were reviewed by 3rd party reviewer.

Council Member Talkington: asked if city is complicit in this issue and their follow through?

City Attorney Nope: stated he advised to stick to the facts of what happened in the process. City is not party to either side.

Council Member Hawkins: asked to clarify "definitions" of developers.

Assistant City Engineer Vitek: stated that there is no definition in the resolution, but the initial developer is the first developer in the development.

Council Member Hawkins: asked about the requirements of the resolution and the original application form not being an official city form. All pieces were submitted as required?

Assistant City Engineer Vitek stated it was an official form.

Council Member Lanting asked both attorneys if the agreement included the pressurized irrigation system

plus the park and storm water.

Attorney Davis: stated she believes the agreement included all infrastructure be provided by Mr. Martens.

Attorney Martens: stated the CC&R's were provided to Council and it clearly states that Jade development is responsible for their portions of the infrastructure.

Council Member Talkington: asked for clarification of the verbiage of the motion to approve.

City Attorney Nope: clarified.

Council Member Reid: asked for clarification of dates for the 90 day window.

Assistant City Engineer Vitek: stated the 90 day window is from the date of acceptance letter, November 28.

Mayor Barigar: asked if pressurized irrigation system is functional.

Council Member Hawkins: asked about the dollar amounts and how they are to base decision.

Assistant City Engineer Vitek: stated the amount is the amount decided by IRC.

Assistant City Manager Humble: stated the 3rd party reviewer also reviewed amounts and deemed them appropriate.

Council Member Pierce: asked about amounts.

MOTION: **Council Member Lanting** moved to approve the appeal of Improvement Reimbursement Commissions approval of Broadmoor application. Council Member Reid seconded the motion. The motion passed with a vote of 6-0-1.

After vote, **City Attorney Nope** stated there needs to be an official document stating decision for Escrow Company to release funds. He stated 48 hours would be sufficient to draft document.

7) GENERAL INPUT/ADVISORY BOARD REPORT/ANNOUNCEMENTS

Council Member Talkington read final report on Airport.

Council Member Talkington stated his wish for downtown needing recycling cans in the 5 blocks of downtown.

City Manager Rothweiler stated the city office intends to have discussion on recycling and their costs at next Council meeting.

Mayor Barigar stated in future meetings revisit small scale city recycling program.

8) PUBLIC HEARINGS: None

9) ADJOURNMENT

The meeting adjourned at 6:45 pm

Kelli Ebersole

Kelli Ebersole, Administrative Assistant Planning & Zoning