

JULY 6, 1972

The City Council of the City of Idaho Falls met in a regular meeting, Thursday, July 6, 1972, at 7:30 P.M. in the Council Chambers in Idaho Falls, Idaho. There were present at said meeting: Mayor S. Eddie Petersen; Councilmen Jack Wood, Gil Karst, Norris Gesas, Jim Freeman, and Mel Erickson. Absent: Councilman Paul Hovey. Also present: Roy C. Barnes, City Clerk; Arthur Smith, City Attorney; Lorna Coughlin, City Treasurer; Don Lloyd, Public Works Director; Robert Pollock, Police Chief; Les Corcoran, Fire Chief; Ernie Craner, Parks & Recreation Director.

Minutes of the last recessed, regular meeting, held June 22nd, were read and approved.

Mr. David Hunter of the Insurance Center appeared before the Council seeking a variance for a sign at his place of business at 885 South Holmes. In this connection the Mayor asked the City Clerk to present and read this explanatory memo:

City of Idaho Falls
July 7, 1972

MEMORANDUM

TO: Mayor and City Council
FROM: Rod Gilchrist
SUBJECT: REQUEST FOR A VARIANCE FOR A SIGN

Attached is a copy of a request for a variance to permit a pole sign to be erected at 885 South Holmes Avenue. This is the site of the existing Falls Insurance Center at 9th and Holmes Avenue. Pole signs are not permitted in the R-3A zone. A variance is required to permit the construction of this proposed sign. The Building Department has reviewed this request and they have no objections to the proposed request.

s/ Rod Gilchrist

Mr. Hunter explained that the proposed sign would be placed three feet from the sidewalk and would be 15 feet high. Asked by Councilman Freeman if the sign would be illuminated, Mr. Hunter said it was so equipped for minimum illumination but that, if the Council so directed, this would not be done. Councilman Wood said that, in his opinion, the sign in question would be compatible with other signs in the area. He said that, as Chairman of the Building and Zoning Committee, he had no objection. Councilman Freeman disagreed. He said that other signs on which a variance was granted in an R-3A zone had been placed flush against the building. Freeman said he was not yet in a position to vote on the issue, inasmuch as he had not had an opportunity to give it sufficient study and had not viewed the area. It was moved by Councilman Wood, seconded by Karst, that this variance be granted. Roll call as follows: Ayes, 4; No, one; carried. Councilman Freeman voting no.

Bills for the month of June, 1972, having been properly audited by the Fiscal Committee, were presented. The City Clerk read all fund totals for salaries, services and materials, as follows:

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<u>FUND</u>	<u>GROSS PAYROLL</u>	<u>SERVICES & MATERIALS</u>	<u>TOTAL EXPENDITURES</u>
General Fund	\$147,221.52	\$81,523.75	\$228,745.27
Fire Bonds	53,408.31	7,691.18	61,099.49
Water & Sewer Fund	16,781.00	30,801.74	47,582.74
Electric Light Fund	43,307.95	79,000.83	122,308.78
Recreation Fund	9,582.84	2,141.47	11,724.31
Police Retirement	2,429.75	.00	2,429.75
<u>TOTAL FUNDS</u>	<u>\$292,395.59</u>	<u>\$241,703.57</u>	<u>\$534,099.16</u>

It was moved by Councilman Karst, seconded by Erickson, that the bills be allowed and the Controller be authorized to issue warrants on the respective funds for their payment. Roll call as follows; Ayes, 5, No, none; carried.

Reports from Division and Departments Heads were presented for the month of June, 1972, and there being no questions or objections, were accepted by the Mayor and ordered placed on file in the office of the City Clerk.

License applications for FIREWORKS, Andy Stavros for Midget Market, Velma Chandler for 25th ward at 450 1st Street, 560 Broadway, and 2050 1st Street, Howard Wakley for 22nd ward at Country Club Shopping Center; RESTAURANT, (FOOD BOOTH) Barbara Sargent for chamber of commerce for 4th of July celebration; JOURNEYMAN ELECTRICIAN, Jerome L. Lange; APPRENTICE ELECTRICIAN, Thomas R. Hughes, with Bonneville Construction Company, Kent Van Orden with Ideal Electric, Richard Knudson with Northwest Electric; BARTENDER, Wanda Jensen, Shannon Engstrom, John Borsom, Kenneth Sheperd, Michael Kilgallon, Gary Wilmot, Eugene C. Jakvak, were presented. It was moved by Councilman Erickson, seconded by Wood, that these licenses be granted, subject to the approval of the appropriate Division Director where required. Roll call as follows: Ayes, 5; No, none; carried.

These damage claims were presented and read aloud:

Mayor S. Eddie Pedersen:

Dear Sir:

On June 15, 1972, my car was impounded in the City Impound and I was sent to jail for petty larceny. The next day I was let out of jail. When I went to pick up my car, I found that the rear wheels and tires, the tape player and all of my stereo tapes had been stolen and they had broken a window out of my car getting in it. I went down to the Police Station and reported the stolen equipment I had to write you a letter and explain what happened. Also I didn't have insurance to cover theft on my car. I would appreciate it very much if you would do something about it. Thank you.

Sincerely,
Mark Brandon
295 Tendoy Drive
Idaho Falls, Idaho

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Mr. Roy C. Barnes
City Clerk
City of Idaho Falls
P.O. Box 220
Idaho Falls, Idaho

Dear Mr. Barnes:

On Sunday, June 25, about 7:30 p.m., sewer water backed up into our basement to the extent of six inches. Also, included with the water was other various pieces of material that usually go hand-in-hand with sewer water. This made an incredible mess and smelled terrible.

I immediately called the City of Idaho Falls Water Department and was informed that my next door neighbor, Jimmie Hopla, 1867 Rainier, had already called to report the sewer backup. It had rained quite early but it had been nice the rest of the day. Within an hour the City crew had the sewer unplugged and the water level was going down.

We moved into this house three months ago and had some of our household goods and personal effects stored in the basement. We have one child, almost two, and my wife is seven months pregnant. This incident has upset her greatly and caused us both a great deal of walking up and down stairs. I am still worrying about her and our unborn child.

I had about \$80.00 worth of art books in the basement. Also I had painting, art sketches, water colors, and magazines that I use in my photography hobby. These latter irreplaceable items I didn't add into the itemized list because I have no idea what value to place on them.

Also, in the basement I had a slide projector that I had used twice that was in six inches of water. I worked on this for about three hours trying to salvage it and I think it will be alright.

We had \$150.00 worth of luggage (Samsonite) in six inches of water that ruined the lining of all of them.

We made an itemized list of the goods that were ruined. The total loss was \$403.04 from the City sewer backup.

Respectfully submitted,
s/ Les S. Wright

P.S. Excuse the paper. The typing paper was among the items lost.

It was moved by Councilman Erickson, seconded by Wood, that these be referred to the City Insurance Adjustor for investigation and proper handling. Roll call as follows; Ayes, 5; No, none; carried.

The City Clerk drew attention to the need for scheduling a zoning hearing on July 27th, 1972, to reconsider the Hatch and Peterson rezoning petition. It was moved by Councilman Wood,

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seconded by Karst, that authorization be granted to publish legal notice for the zoning hearing in question. Roll call as follows: Ayes, 5; No, none; carried.

This memo from the Electrical Inspector was presented:

City of Idaho Falls
June 30, 1972

MEMORANDUM

TO: Mayor and City Council
FROM: Boyd J. Emery, Chief Electrical Inspector & Secretary of the Electrical Board of Registration and Review
SUBJECT: ACCEPTANCE OF THE 1971 NATIONAL ELECTRICAL CODE AND THE DELETION OF FOUR SENTENCES FROM OUR CITY ELECTRICAL CODE ORDINANCE NO. 1132 TO MEET THE MANDATORY "CODES ADOPTION AND ENFORCEMENT PROGRAM" REQUIREMENTS SET FORTH BY HUD FOR RE-CERTIFICATION IN THEIR VARIOUS PROGRAMS.

In regard the above named subject please find attached copy of the minutes of the City of Idaho Falls, Idaho Electrical Board of Registration and Review meeting which was held at the City Annex Building on June 21, 1972. Said minutes in reference to the above subject are self explanatory. Please accept this memorandum as a request from the Board for Council Action on this matter at the earliest possible date due to its urgency in HUD's allowing our City's re-certification in the various Federal projects in which we are now participating.

s/ Boyd J. Emery

It was moved by Councilman Wood, seconded by Karst, that the City Attorney be directed to prepare an appropriate amendatory ordinance for Council consideration. Roll call as follows: Ayes, 5; No, none; carried.

From the Public Works Director, this memo was forthcoming:

City of Idaho Falls
Public Works Division
July 6, 1972

TO: Honorable Mayor and City Council
FROM: Donald F. Lloyd
SUBJECT: SANITARY SEWER BETWEEN 13TH & 14TH STREETS

Bids were received this morning, July 6, 1972, for a sanitary sewer replacement in the alley between 13th & 14th Streets from Boulevard to Lee.

Hartwell Excavating Co.	\$5,849.00
Atlas, Inc.	15,521.50

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The Engineering estimate for this work was \$5,144.10. We would recommend to the Council that a contract be awarded to the low bidder, Hartwell Excavating, in the amount of \$5,849 and that the Mayor and City Clerk be authorized to sign.

s/ Donald F. Lloyd

It was moved by Councilman Gesas, seconded by Karst, that Hartwell Excavating Company be awarded the bid for the contract as described. Roll call as follows: Ayes, 5; No, none; carried.

Another memo from the Public Works Director was submitted, to-wit:

City of Idaho Falls
June 30, 1972

TO: Honorable Mayor and City Council
FROM: Donald F. Lloyd
SUBJECT: FILING APPLICATION TO HUD, PHASE 2, WATER FACILITIES PROJECT

Three contracts have been let toward Phase I of the Water System Improvement Project. We anticipate the balance of the work will all be under contract before the end of September of this year.

Phase II of the Water System Improvement Program should be underway during 1973 at an estimated cost of \$699,775. We are requesting authorization to apply for Federal assistance for \$291,573 from HUD and further that the Public Works Director be authorized to sign the application.

Respectfully submitted,
s/ Don

It was moved by Councilman Gesas, seconded by Karst, that authorization be granted to apply for Federal assistance in the amount as stated for Phase II of the Water Systems Improvement Program and that the Public Works Director be authorized to sign the application in question. Roll call as follows: Ayes, 5; No, none; carried.

Finally from the Public Works Director, this memo was presented:

City of Idaho Falls
July 6, 1972

TO: Honorable Mayor and City Council
FROM: Donald F. Lloyd
SUBJECT: PRIVATE USE OF PUBLIC RIGHTS OF WAY

In the downtown area it has not been uncommon for businesses to utilize the area beneath the sidewalk. During the design of the Shoup Avenue project two alternatives were available.

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1. Provide a new wall at the property line and fill the area in, or
2. Provide new structural members over the excavated area.

The Public Works Committee reviewed the information in some detail and are now recommending to the Council that private use of these rights of way no longer be available. The Committee is suggesting that as each construction project develops these under-the-sidewalk areas be eliminated. We are asking for your concurrence in this policy.

s/ Don

It was moved by Councilman Gasas, seconded by Karst, that all affected property owners within L.I.D. #42 be advised that private use of public rights of way are no longer available to them and that this same directive apply to all future L.I.D.'s and other public works projects. Roll call as follows: Ayes, 5; No, none; carried.

Councilman Wood drew attention to the fact that the Epcon Inc. lease at the airport expired as of May 31st but that the rental fee is paid to September 1, 1972 and that, in the interim period, the lease be re-negotiated with this or other firms, hopefully under a more favorable arrangement for the City. Roll call as follows: Ayes, 5; No, none; carried.

This letter was presented by Councilman Wood:

Skyhaven Restaurant & Lounge
July 3, 1972

Honorable S. Eddie Pedersen
Mayor of Idaho Falls and
City Council of Idaho Falls
P.O. Box 220
Idaho Falls, Idaho 83401

M.H.P. Hill
Director of Aviation
Fanning Field
Idaho Falls, Idaho 83401

Gentlemen:

This is to advise that Skyhaven Hangars has negotiated a sale of the Skyhaven Restaurant at Fanning Field to Stanley Linkowski, who has been manager of the restaurant and lounge since Skyhaven Hangars took over the premises.

Skyhaven Hangars will assign all of its right, title and interest in and to the lease, the personal property on the premises, and the liquor licenses to Mr. Linkowski, under a title retaining provision that in the event of default under any of the terms of purchase Skyhaven Hangars, Inc. would take back all of said property and interest therein.

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As you are aware, any such transfer under the terms of the lease is subject to approval of the City as lessor.

We are anxious to consummate the transfer as soon as possible, and therefore request approval of the City if this assignment and transfer to Mr. Linkowski at the Council meeting, July 6, 1972, or sooner.

Upon notification of this approval by the City the transfer will be effected. If you have any questions concerning this matter do not hesitate to call on me. Thank you for giving this your attention.

Sincerely,
s/ Ward Hittson

It was moved by Councilman Wood, seconded by Gesas, that the City Attorney be directed to prepare an appropriate lease assignment from Skyhaven Hangars to Stanley Linkowski after which the Mayor and City Clerk be authorized to sign. Roll call as follows: Ayes, 5; No, none; carried.

Councilman Gesas relayed a request from Mr. Reed Bowen who was seeking approval, during the period of his building renovation on Capital Avenue, to install colored sidewalk and certain landscaping facilities which would protrude out into the street. Gesas registered complimentary appreciation to Mr. Bowen for improving his building and his desire to effect these beautification aspects but he also registered concern in the interests of Mr. Bowen about the latter improvements at this time. Gesas explained that the sidewalk grade is not yet known, neither are the future requirements for underground electrical conduit. Gesas continued by noting that the proposed beautification plan for landscaping is not in context with the approved design being applied under L.I.D. #42 and, hopefully, other L.I.D.'s covering the downtown area. Gesas recommended that the Council deny this beautification proposal, making it clear that said denial was prompted primarily as a protection to Mr. Bowen inasmuch as improvement of this nature at this time would likely have to be torn out and replaced within the predictable future. Councilman Erickson suggested, with general Council concurrence, that Mr. Bowen should be advised that, at the proper time, when these or similar improvements could be made in precise conformity to City specifications he might, if he then chose, proceed with said improvements and would be given credit for same under the L.I.D. that would otherwise provide said improvements. It was moved by Councilman Gesas, seconded by Karst, that the City Attorney be directed to advise Mr. Bowen relative to the foregoing Council discussion and conclusions. Roll call as follows: Ayes, 5; No, none; carried.

This legal opinion was presented and read by the City Attorney:

City of Idaho Falls
July 6, 1972

Mayor and City Council
City of Idaho Falls
P.O. Box 220
Idaho Falls, Idaho

RE: Zoning hearing, June 22, 1972

JULY 6, 1972

Gentlemen:

The City Clerk requested that the City Attorney further clarify the decision rendered by him following the public hearing concerning the rezoning of a tract of land lying north of Grandview, east of Skyline, west of Foote Drive and south of the Industrial Park. Accordingly, I furnish this written opinion as to the legal effect of the vote taken and recorded following that hearing.

Records of the City show that the following circumstances and proceedings existed and/or occurred in connection with the case:

- (1) A petition was filed recently seeking a change in zoning of a parcel of land containing approximately 12.5 acres in the area above described. The current zoning was, and is, M-1 and R-3A; the zoning requested was RSC-1.
- (2) Protests by owners of 20% or more of the area of the lots within 300 feet of the subject land were duly filed with the City.
- (3) The Planning Commission, or Zoning Commission, held a public hearing on the petition to rezone. That Commission by a 5 to 4 vote recommended that the petition to rezone be denied.
- (4) The City Council then called and conducted a public hearing concerning the petition to rezone. At that meeting held June 22, 1972, 5 Councilmen and the Mayor were in attendance. Following the public hearing, a vote of the Council was taken with the results as follows:
 - (a) 3 Councilmembers voted to grant the petition for rezoning.
 - (b) 2 Councilmembers voted to deny the petition.

It is the opinion of the legal department that the petition to rezone was denied by that vote. Under the circumstances existing it would have required 4 affirmative votes to have changed the zoning. There are two statutes in Idaho requiring the result. The two statutes are set out in full as follows:

“50-1205. Regulations – Changes – Such regulations, restrictions and boundaries may from time to time be amended, supplemented, changed, modified or repealed. In cases, however, of a protest against such change, signed by the owners of twenty percent (20%) or more either of the area of the lots included in such proposed change, or of those within a three hundred (300) foot radius of the exterior boundaries of such lots included in such change, such amendment shall not become effective except by the favorable vote of one half (1/2) plus one (1) of the members of the full Council of such City. The provisions of the previous section relative to public hearings and official notice shall apply equally to all changes or amendments.”

Idaho Code, 50-1205

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“50-1210. Zoning Commission – In order to avail itself of the power conferred in sections 50-1201 through 50-1210, the City Council shall appoint a Commission to be known as the Zoning Commission to recommend the boundaries of the various districts and the regulations to be enforced therein. Such Commission shall hold public hearings thereon before submitting its report; and the Council shall not hold its public hearings or take action until it has received the report of such Commission. The Council shall accept the recommendations of the Commission Report unless rejected by a vote of one half (1/2) plus one (1) of the members of the full Council. Where a City Planning Commission exists, it may be appointed as the Zoning Commission.”

Idaho Code, 50-1210

It is the opinion of this Department that “one half (1/2) plus one (1) of the members of the full Council” means four (4) members in a City with six Councilmen. The reason that statute doesn’t state that four Councilmen may change the zoning is because some cities have only four Councilmen.

Following the taking of the votes the proceedings concerning the petition in question are finished. Any further proceedings concerning the zoning of the subject land must be initiated by the filing of a new petition.

Respectfully submitted,
s/ A. L. Smith
City Attorney

It was moved by Councilman Freeman, seconded by Erickson, that the foregoing legal opinion be made a matter of official record, thus retracting and rescinding the Council action taken during the public zoning hearing on June 22nd, 1972. Roll call as follows: Ayes, 5; No, none; carried.

The foregoing legal opinion prompted certain concern and open discussion by the Councilmen. Councilman Erickson asked whether or not, on an issue of this nature, the Mayor could, in the event of a 3 to 3 tie vote by the Councilmen, break the tie, thus providing the 4th vote. The City Attorney answered by saying that, in his opinion, this would not satisfy the legal requirements as the statute calls for a 3 plus 1 vote of the full Council. Smith agreed, however, that, to his knowledge, there has never been a Supreme Court decision on this matter. Councilman Wood made reference to the second hearing to be held July 27th and asked if all written protests must again be original and was answered in the affirmative by Smith who added that the petition, also, must be a second original. It was generally agreed that this must receive wide coverage by the news media so that all interested parties might be alerted.

Councilman Erickson relayed a request for 20-minute parking in front of the Nelson Hotel. It was moved by Councilman Erickson, seconded by Wood, that this be referred to the Traffic Safety Committee for study and recommendation. Roll call as follows: Ayes, 5; No, none; carried.

Again introduced was the Ordinance that would prohibit the willful damaging and injuring of any television community antenna system property. Councilman Erickson said this had not yet been reviewed by the Police Committee. Councilman Gesas said this would also apply to the Electric Committee. It was moved by Councilman Erickson, seconded by Wood, that consideration of this Ordinance be tabled for the time being. Roll call as follows: Ayes, 5; No, none; carried

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It was moved by Councilman Freeman, seconded by Erickson, that authorization be granted to advertise for bids on the multi-purpose shelter at Tautphaus Park as soon as specifications are prepared. Roll call as follows: Ayes, 5; No, none; carried.

There being no further business, it was moved by Councilman Freeman, seconded by Gesas, that the meeting adjourn at 8:50 p.m., carried.

ATTEST: s/ Roy C. Barnes
City Clerk

s/ S. Eddie Pedersen
Mayor

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