APRIL 14, 1964

Pursuant to a call by the Mayor the City Council of the City of Idaho Falls met in Special Session in the Council Chambers of the City Building on the 14th day of April, at 7:30 P.M. for the purpose of conducting an informal hearing, relative to the First Street Recreation Center, as well as any other business which might properly be presented. There were present at said Meeting: Mayor S. Eddie Pedersen; Councilmen Parish, Freeman, Keller, Leahy, Nelson. Absent; Councilman Page. Also present: Roy C. Barnes, City Clerk; Arthur Smith, City Attorney; Don Lloyd, Public Works Director; Peter Hill, Airport Manager.

The Mayor announced that this was the time and the place for a second informal hearing, relative to the First Street Recreation Center.

Councilman Freeman noted that the local press had recently released a news item on this controversy indicating that the Council had been polled, unofficially, resulting in a four to one vote in favor of restoring electric service. He announced that this information was inaccurate; that he as a Councilman had not been called upon by anyone, unofficially or otherwise, to reveal his vote; that the article inferred that the Council had met in closed meeting to conduct this poll which was not the case.

The City Attorney introduced the following resolution which was read by the City Clerk:

R E S O L U T I O N (Resolution No. 1964-10)

WHEREAS: An action is now pending in the District Court of the Ninth Judicial District of the State of Idaho titled "Corporation of the Presiding Bishopric of the Church of Jesus Christ of Latter Day Saints, a corporation, Plaintiff, versus the City of Idaho Falls , a municipal corporation; W. J. O'Bryant, as Mayor, and Donald R. Foote, Alex Creek, Phillip Leahy, and Karl G. Page, as Councilmen of the City of Idaho Falls, Defendants, versus Thomas Ashton, E. L. Berry, by and on behalf of themselves and others similarly situated, Interveners"; and

WHEREAS: The Plaintiff, hereinafter referred to as "The Church" is seeking equitable relief against the Defendant, hereinafter referred to as "the City", as follows:

1. For an injunction requiring the City to cease interfering with, or obstructing, the use, and intended use, by the Church of its property situated on First Street in Idaho Falls, Idaho.

2. For an order requiring the City to furnish electricity to said property; and

WHEREAS: The Interveners are seeking relief in said action as follows:

1. That the Church be restrained from using its said property as a lighted softball field, and that the Church be restricted from consenting to, encouraging, operating and maintaining such Church facilities as lighted softball fields, and from playing games thereon.

2. That the Church be perpetually enjoined from operating its said premises in violation of the ordinances of Idaho Falls; and

WHEREAS: A controversy, therefore, exists as to whether the use of its property by the Church is in violation of the City ordinances, and whether such use constitutes a nuisance in law or fact; and

WHEREAS: In July of 1962 the City discontinued electrical service to said property for night lighting of its recreational area; and

WHEREAS: A study of the history of said property, its uses, and facilities, reveals that the City originally acquiesced in and encouraged the laying out, constructing and equipping of the recreation area for its intended use and night lighting, and assured the Church that such uses were not in violation of the City ordinances; that such conduct on the part of the City is in conflict with its later action in discontinuing electrical services to the property; and

WHEREAS: The City is now in doubt as to whether the use of the Church property is in violation of the City ordinances, and can take, and does take, no position as to whether any nuisance exists in relation to such use; and

WHEREAS: The City recognizes that its electrical system is a public utility owned and conducted in its proprietary capacity and should not be used in the enforcement of its general ordinances; and

WHEREAS: The issues as to whether the said use of the Church property is in violation of any ordinance and whether such use is a nuisance can be fully determined by the court in said action upon the issues presented between the Church and the Interveners; and

WHEREAS: The Church has now made formal demand upon the City for electrical service at its said property and has offered to turn its lights off at its recreation field not later than 9:55 P.M. pending the final determination of the said action;

NOW THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Idaho Falls as follows:

1. That electrical service be forthwith furnished to the whole property of the Church at its church and recreation center on First Street.

2. That the furnishing of such services shall not be construed as an expression of opinion on the part of the City, one way or the other, as to whether the use of the Church property is in violation of any ordinance, or whether a nuisance exists, the resolution of said issues being left to abide the decision of the court in said action.

3. That the City attorney be authorized on behalf of the City to effect a dismissal of the City from the action brought by the Church upon the execution of an agreement by the Church to turn off its lights at the recreation field not later than 9:55 P.M. pending final disposition of the action.

4. That the City attorney be further authorized to represent the City and to prosecute and defend therein, pursuant to the instructions and sense of this resolution, any further actions or proceedings brought in relation to the said Church property and its uses.

PASSED BY THE COUNCIL AND APPROVED BY THE MAYOR this 14th day of April, 1964.

ATTEST: s/ Roy C. Barnes — CITY CLERK

s/ S. Eddie Pedersen — MAYOR

The Mayor invited comment from the Councilmen or the floor. An extended discussion followed between the Councilmen, the City Attorney, the Attorney representing the Church, Mr. Reed Moss, and the Attorney representing the nearby residents, Mr. Tom Whyte. Following, in effect, is some of the salient conversation:

Nelson: Can we, the Councilmen, simply assume that this is an inherited problem and leave the situation status quo?

Smith: There is a possibility that damages can be sought for electric service not having been restored.

Leahy: The area in question is being developed under the existing ordinance as administered and enforced by the City.

Smith: Originally, in 1961, we must assume that the Council was at least cognizant of the building plan and acquiesced to it. They must have interpreted that the Zoning Ordinance would permit the Church and the recreation complex. Later, in 1962, the Council apparently changed its position. Initially, the Planning Commission, the City Attorney and the Building Official also must have been of the opinion that there was no zoning conflict. If the present Council refuses to restore electric service, this would be construed to the effect that, in the opinion of that group, the complex is in conflict with the Zoning Ordinance, as written and defined.

Nelson: In what position is the City with the Public Utility Commission?

Smith: In my opinion, slightly in jeopardy, at least in the eyes of the court. There are other, and perhaps more appropriate, ways of enforcing a Zoning Ordinance than by refusing electric service.

Leahy: The occupant is supposed to have a use permit before construction starts. Ordinance interpretation is still the problem. It was my understanding that this was a friendly case so that the court could interpret and decide.

Nelson: Would a private utility have furnished electric service under the circumstances?

Smith: Yes, providing they were satisfied with all other facets such as inspections, deposits, etc.

Nelson: Does the City have the right to deny access to the area?

Smith: No. Incidentally, even the new proposed ordinance is ambiguous in its definition of a Church.

Leahy: It must be remembered that the City did provide electric service. There should have been permits issued prior to March 14, 1963 for plumbing and electric work accomplished prior to that time.

Keller: Can we assume that the City was responsible initially, for providing electric service?

Smith: Yes; therefore, the City may be in jeopardy, now, for refusing to restore same.

Parish: It would appear that the City is now involved because of loose handling on the part of the previous administration.

Smith: The present case could have been decided without the City having discontinued electric service. As stated in the resolution, the lights could now be restored without prejudice to the nearby residents.

Nelson: Even so, that group would probably construe it otherwise.

Moss: There are principally two charges; one involving nuisance, one involving zoning violation. It would be preferable, if this case goes to the Supreme Court, to go one route, rather than two.

Whyte: Interpretation of the ordinance is paramount and when finally defined, all other problems will fall into place.

Smith: When electric service was discontinued in 1962, the City, inadvertently or otherwise, took the position that the Church was in violation of the ordinance and, as it stand now, the case will be tried with the City as one of the defendants on those same grounds. Do you, the Council wish it this way or would you prefer, if possible, to take a position of neutrality which you would be doing, in my opinion by adopting the foregoing resolution?

Nelson: Mr. Whyte, is this also your opinion?

Whyte: No. That would only be attacking the problem from one standpoint. There is still the need to determine ordinance interpretation.

Moss: There is nothing in the lawsuit that can't be otherwise decided if the City restores electric service and, thus, takes a neutral position.

Parish: Prior to becoming a Councilman I took a stand as a member of the Planning Commission that the ordinance, as written and defined, had not been violated, and it would be impossible for me to reverse that stand now, even recognizing that both the residents and the Church have legitimate charges for a case.

Sometime during the foregoing discussion by the Councilmen, Mr. Scott Sherman, 965 Austin, appeared and said that, in his opinion, the City would be imposing a nuisance on the nearby residents by restoring electric service. Also, he had asked if passage of the resolution would be giving tacit approval to future lighted fields, and was answered by Councilman Parish to the effect that this should be resolved by the new Zoning Ordinance which is more explicit in its wording.

Also during the foregoing discussion, Mr. Keith Clarke, local radio announcer, appeared and asked if official Council action had ever been taken to discontinue electric service and was answered by the Mayor that said action was taken informally on July 23rd and formally ratified on August 9th, 1962. He then asked Councilman Leahy if he had, in the interim period, changed his opinion and was answered in the negative.

In the absence of further discussion, it was moved by Councilman Nelson, seconded by Keller, that the foregoing resolution be adopted and the Mayor and City Clerk be authorized to sign. Roll call as follows: Nelson, Aye; Page, Absent; Parish, Aye; Freeman, Nay; Keller, Aye; Leahy, Nay; carried.

License applications for BARTENDER, Lloyd L. Brown, Merrill Shipley, Walter Elg; RESTAURANT, 19th Hole Café (previous approval City Sanitarian); APPRENTICE GAS FITTER (previous approval Heating Inspector) Merle J. Anderson; BEER, 19th Hole Café (previous approval Police Chief)(canned and bottled to be consumed on the premises) were presented. It was moved by Councilman Nelson, seconded by Keller, that these licenses be approved. Roll call as follows: Ayes, 5; No, None; carried.

It was noted that the Council had, on April 9th, 1964, denied a photographer license application in the name of Humpty Dumpty Inc. It was explained by the City Clerk that this had been done because of a denial recommendation by the Police Chief which, in turn, had been so recommended, not because of a derogatory investigation report, but because of a Chamber of Commerce complaint that this organization was in the field, operating without a license. Therefore, it was moved by Councilman Nelson, seconded by Freeman, that the previous Council action be rescinded and the license be approved. Roll call as follows: Ayes, 5; No, None; carried.

Councilman Freeman noted that bids had been opened April 9th, 1964, on nine automobiles, one for the Fire Department and eight for the Police Department. Four had responded and the low bidder was Stoddard Ford with a unit price of $2289.22 for a custom model standard 4 door Ford sedan. It was moved by Councilman Freeman, seconded by Leahy, that the low bid for the nine units be accepted. Roll call as follows: Ayes, 5, No, None; carried.

This memo from the Public Works Director was read:

April 14, 1964
Acct. No. 3B-76A

Honorable Mayor and City Council
City of Idaho Falls
Idaho Falls, Idaho

Gentlemen:

Attached herewith is the proposed final plat of Riviera Homes Addition, Division No. 2.

Lots 17 and 18, the "Islands" within the cul-de-sacs, are surrounded by public right of way. These "Islands" could possibly revert to the City and become a maintenance problem in

future years. The City Attorney advised, that, omission of these "Islands" from the plat, is the only insurance that a future maintenance responsibility will not be assumed by the City.

We recommend that the "Islands" be removed from the plat and the cul-de-sacs be public right-of-way in their entirety.

Respectfully submitted,
Donald F. Lloyd, P. E.
City Engineer

s/ Ethan Axtmann
Ethan F. Axtmann, P. E.
Traffic Engineer

Attach.

It was moved by Councilman Parish, seconded by Leahy, that the plat be approved with the understanding that the islands or planters be eliminated and, with this deletion, the Mayor and City Clerk be authorized to sign. Roll call as follows: Ayes, 5; No, None; carried.

The final plat of Bona Vista Addition, Division #1, was also presented. After some study, it was moved by Councilman Leahy, seconded by Keller, that the plat be approved, subject to final checking by the Engineering Department, and the Mayor and City Clerk be authorized to sign. Roll call as follows: Ayes, 5; No, None; carried.

Mr. Bob Steiling of the local Chamber of Commerce appeared before the Council for the purpose of discussing itinerant photographer licensing. He said his office has many complaints of unlicensed operators. He said, even those who do make application proceed to operate prior to the time the license is issued. He recommended that, in the future, no Council action be taken until the Police investigation is completed which would give his office more time to complete their investigation. No Council action was taken in this regard.

Councilman Nelson explained that the airport is operating on only one half the transformer capacity power units needed for prop-jet service, expected within the next sixty days. He introduced Mr. Pete Hill, Airport Manager, who pointed out that three additional 50 KVA transformers would be needed at a cost of $2676.00, $900.00 of which should be considered as a credit, represented by existing transformers which are still serviceable and could be used to advantage by the Electric Department. Hill explained further that there may be certain budgeted items that could be deleted to provide funds for this unbudgeted expenditure. It was noted by Councilman Leahy that this service would be provided primarily for the commercial carriers, that their rental fee includes utilities, that more electric service would be needed if the larger transformers were installed and so the City would be justified in asking the carriers to bear a portion of the installation costs. It was proposed, with general Council agreement, that the Electric Department provide the transformers and the airlines furnish the cable from the transformer vault to the parking apron.

Councilman Parish presented the memo as prepared by the Controller:

TO: Mayor S. Eddie Pedersen and City Council
FROM: L. I. Jenkins, Controller
SUBJECT: OPTION TO PURCHASE IDAHO CONCRETE PRODUCTS CO., INC.

December 3, 1963 the City of Idaho Falls signed an option to purchase 2.36 acres of land belonging to Idaho Concrete Products Company, Inc., adjacent to the area known as the South Park. The option deposit was $500.00. Total cost at $4,000.00 per acre, totaling $9,440.00, leaving a balance of $8,940.00 to be paid should the City exercise this option.

The effective date of the option agreement was March 18, 1963, which means that the option has expired as of March 18, 1964. However, the Idaho Concrete Products Co. has verbally waived the March 18, 1964 date, providing the City wishes to exercise the option and purchase the land.

The purchase of land is provided for in the 1964 Budget in the amount of $8,940.00 under Code No. 4220.51.

cc: P. Leahy
K. Page
D. Parish
G. Nelson
R. Keller
J. Freeman

It was moved by Councilman Parish, seconded by Leahy, that the option, as described, be extended to a date suitable and agreeable to both affected parties and as needed to satisfactorily clear the title and complete the purchase. Roll call as follows: Ayes, 5; No, None; carried.

There being no further business, it was moved by Councilman Leahy, seconded by Nelson, that the Meeting adjourn. Carried.

ATTEST: s/ Roy C. Barnes
CITY CLERK

s/ S. Eddie Pedersen
MAYOR

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