

NOVEMBER 21, 1983

The City Council of the City of Idaho Falls met in recessed Regular Meeting, November 21, 1983, in the Council Chamber in Idaho Falls, Idaho.

Prior to calling the meeting to order, Mayor Campbell called upon Scout Richard Pederson to come forward and lead all those present in the Pledge of Allegiance to the flag.

The Mayor then called the meeting to order, and upon roll call, the following were found to be present: Mayor Tom Campbell; Councilmen Paul Hovey, Ralph Wood, Art Chandler, Mel Erickson, and Wes Deist; absent, Councilman Sam Sakaguchi. Also present: Velma Chandler, City Clerk; Dale Storer, City Attorney and all available Division Directors.

Minutes of the last Regular Council Meeting held November 10th and a Special Meeting held November 18th, 1983 were read and approved.

The Mayor announced that this was the time and the place, as legally advertised, to consider an appeal to a Board of Adjustment decision and called upon Councilman Wood, to conduct the hearing. At the request of Councilman Wood, the City Clerk read this explanatory memo from the City Planner:

November 21, 1983

MEMORANDUM

TO: Mayor and Council
FROM: Rod Gilchrist
SUBJECT: APPEAL FROM DECISION OF BOARD OF ADJUSTMENT

Attached is a copy of a request for a variance submitted by Kenneth DeCoria, 265 Carol Avenue. He is requesting permission to leave a fence which was constructed in his front yard which does not conform to the requirements of the Zoning Ordinance. The Ordinance prohibits a wooden fence higher than three (3) feet to be constructed in the front 15 feet in a residential zone.

The permit for this fence was taken out in April of this year and the permit clearly stated that 15 feet behind the sidewalk the fence could be no higher than three feet unless it was chain link or an open-type fence. In early summer, Mr. DeCoria was notified that the fence was in violation and would have to be corrected. Approximately six to seven feet of fence slopes from a height of five feet down to a height of 39 inches within the 15 foot area behind the sidewalk.

The Building Inspector held a telephone conversation with Mr. DeCoria late this summer, in which the problem was discussed. This fall, the Building Inspector was again in the area and noted the situation had not been corrected. At that time a letter was sent informing Mr. DeCoria of the correct height and that it must be corrected. Mr. DeCoria then appealed the fence height to the Board of Adjustment. The Board of Adjustment subsequently denied the variance request.

Mr. DeCoria is now appealing the decision of the Board of Adjustment to the City Council. This matter is now being submitted for your consideration.

s/ Rod Gilchrist

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Kenneth D. Cox and Roberta Cox, plaintiffs in the above-entitled and numbered cause, petition the Court pursuant to Section 10:1201 et al of the Idaho Code for determination and declaration of the duties and rights between the parties, a finding that the contract of sale is void ab initio is in violation of a valid city ordinance and a declaration of the relief to be granted to plaintiffs. In support of this petition, plaintiffs allege as follows:

I.

Plaintiffs are individuals residing in Idaho Falls, Bonneville County, Idaho and are hereafter called "Coxes".

II.

Defendants Zane C. Hall and Maurine C. Hall, husband and wife, and Brad H. Hall and Andrea Hall, his wife are individuals residing in Idaho Falls, Bonneville County, Idaho and are hereafter called "Halls".

III.

The defendant City of Idaho Falls is the incorporated municipality in Bonneville County and is hereafter called "City".

IV.

The defendants Bonneville Land & Title Company and Pioneer National Title Insurance Company are corporations doing business as land title companies in Bonneville County, Idaho are hereby called "Title Companies" with Bonneville Land and Title Company acting as an authorized agent for the other in all matters herein.

V.

That by negotiations culminating on September 18, 1979 "Coxes" executed a Contract of Sale with "Halls" wherein on terms and conditions "Coxes" and others, whose interests have now been converted to "Coxes", agreed to purchase the following real property, situate in the City of Idaho Falls, County of Bonneville, State of Idaho, to-wit:

The North 150 feet of the East 150 feet of Lot 1, Block 1, First Amended Plat Hall Park Addition, Division No. 1, according to the recorded plat thereof.

A copy of said contract is attached hereto as Exhibit A and incorporated herein.

VI.

That "Coxes" have fully performed all terms and conditions of the Contract of Sale required to this present time.

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VII.

That said real property agreed to be conveyed in the Contract of Sale is a portion of Block 1 of the City of Idaho Falls, and in particular is zoned RSC-1 Residential Shopping Center Zone as per the ordinance of said City.

VIII.

“That the City” Ordinance regulating the property herein is in Section 7-9-9-J which prohibits the intended conveyance as follows:

“7-9-9-J. Ownership

All land in the proposed Residential Shopping Center shall be held in one ownership or in unified control so that all landscaping, off-street parking space, and other common areas can be properly maintained.”

A copy of the City’s RSC-1 ordinance together with paragraph’s 8-5, 8-6, 8-7, & 8-8 thereof are attached hereto as Exhibit B.

IX.

That the City’s ordinance conforms to Section 67-6515 and 67-6527 of the Idaho Code and are valid and enforceable herein.

X.

That said Contract of Sale does not create a “one ownership” or “unified contract” agreement in said real property between “Halls” and “Coxes”.

XI.

That the Contract of Sale attempts to circumvent the ordinance and is in direct violation thereof; that being in violation of the ordinance the contract is void ab initio.

XII.

Plaintiffs contend and request the Court to declare that Plaintiff’s liability to defendants Hall is extinguished and that it has never been validly in existence.

XIII.

In the alternate event that the contract is declared enforceable and valid, plaintiffs requests a determination of their rights and duties in the landscaping, off-street parking space, and other common areas of the RSC-1 Center.

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XIV.

That defendants Title Companies issued a Commitment for Title Insurance to Plaintiffs on September 12, 1979 which contained no exceptions or reservations for the City's Ordinance; that plaintiff's representation received from Hall's agents, that the property was zoned commercial was supported by the Title Companies commitment; that the transaction was finalized and thereafter the Policy of Title Insurance was issued and the bill paid. Said commitment and Policy are incorporated herein as Exhibit C and D.

XV.

Plaintiffs now discover that the title companies are claiming the exceptions. as contained in the Policy of Title Insurance, that eliminate their liability to plaintiffs for this title problem.

XVI.

Plaintiffs allege that Title Companies had a duty to exercise reasonable care to disclose and explain the exceptions prior to payment and issuance of the policy. It is unconscionable for all defendants agents, who stood in a Quasi-fiduciary relationship with plaintiffs, to negate the purpose of this contract by this failure of disclosure.

XVII.

Furthermore plaintiff alleges and believes that Halls agents, were owners of the defendant Bonneville Land & Title Company when they drafted the contract of Sale, represented the land was commercial and purchased the title insurance that supposedly protected plaintiffs.

WHEREFORE, Plaintiffs request that defendants be cited to appear and answer herein, and that on final hearing, plaintiffs have judgment as follows:

1. A declaration that the Contract of Sale is void ab initio.
2. A judgment against all defendants for the sums plaintiffs have paid defendants Halls on contract, together with interest at the highest legal rate on such payments, and damages for the loss of the value of the appreciated property.
3. Cost incurred herein.
4. Sue other and further relief at law or in equity, as to which this pleading or amendments thereto entitled the Plaintiffs.

DATED this 27th day of October, 1983.

Respectfully submitted,

s/ Alva A. Harris
Attorney for Plaintiffs

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It was moved by Councilman Erickson, seconded by Wood, that this action be duly ratified. Roll call as follows: Ayes, Councilmen Wood, Chandler, Erickson, Deist, and Hovey; No, none; carried.

License applications for GROCERY STORE, Albertsons #145 (1705 W. Broadway), J.H. Boozer Oil Company, Buttreys, Edward's Farmers Market; MEAT MARKET, Albertsons #145 (1705 W. Broadway), Buttreys, Edward's Farmers Market; BAKERY, Albertsons #145 (1705 W. Broadway), Buttreys; RESTAURANT, Chicken Broaster, Smitty's Pancake & Steak House; FOUNTAIN, Don Wilson Drug; PHOTOGRAPHER, Sandy Lindy, Carma McDermott, Suzette Moss; AUCTIONEER, Robert E. Mann; ITINERANT MERCHANT, Sound City (Dennis B. Farnes); ELECTRICAL CONTRACTOR, Kent's Electric, O'Connor Electric, Inc.; JOURNEYMAN ELECTRICIAN, Kent A. England, Vardell B. Tait; APPRENTICE ELECTRICIAN, Paul W. Grover, with Kent's Electric; CLASS D JOURNEYMAN, GAS FITTER, Rosslyn H. Bidstrup; RETAIL WINE, Albertsons #133 (735 E. Anderson), Albertsons #145 (1705 W. Broadway), J.H. Boozer Oil Company, Buttreys, Edward's Farmers Market, Skaggs Drug #259 (1705 W. Broadway); PRIVATE PATROLPERSON, Wayne E. Reynolds; BARTENDER, Karen Hansen, Joseph T. Carello, Peggy S. Bell, Joni A. Christensen, Kim R. Finuf, Kelly Ann Hooks, Merrill B. Ingelstrom, Ralph K. Ingram, LaVonna C. Jenkins, Randall L. Johnson, Clarence R. Moore, Bret Alan Templeton; PUBLIC RIGHTS OF WAY, Homestead Construction, Inc., were presented. It was moved by Councilman Erickson, seconded by Wood, that these licenses be issued, subject to the approval of the appropriate Division Directors where required. Roll call as follows: Ayes, Councilmen Erickson, Deist, Hovey, Wood, and Chandler; No, none; carried.

BEER license applications (TO BE CONSUMED ON THE PREMISES) for Pizza Hut (1970 W. Broadway), Pizza Hut (725 E. Anderson); and NOT TO BE CONSUMED ON THE PREMISES) for Albertsons #133 (735 E. Anderson), Albertsons #145 (1705 W. Broadway) were presented. It was moved by Councilman Erickson, seconded by Wood, that these licenses be issued subject to the investigation and approval of the Chief of Police, provided that, upon failure to obtain such approval, the application be referred back to the City Council. Roll call as follows: Ayes, Councilmen Wood, Chandler, Erickson, Deist, and Hovey; No, none; carried.

The City Clerk asked for Council ratification of issuing an AUCTIONEER license to Del C. Hobbs; an ITINERANT MERCHANT license to Llama Rugs for David Singley; and a BEER license for B & B Chevron (transferred from Douglas A. Alvey to Michael Baker) (NOT TO BE CONSUMED OF THE PREMISES). It was noted that all of these had been approved by the appropriate Division Directors before issuance. It was moved by Councilman Erickson, seconded by Wood, that this previous action be ratified. Roll call as follows: Ayes, Councilmen Wood, Chandler, Erickson, Deist, and Hovey; No, none; carried.

From the General Services Director came this memo:

November 17, 1983

ATTENTION: Honorable Mayor and City Council
FROM: Chad Stanger
SUBJECT: BID #IF-84-2, SURPLUS USED EQUIPMENT

Attached is a tabulation of bids of Bid #IF-84-2, Sale of Surplus Used Equipment. It is the recommendation of Property Management and General Services that the bids of Item Number's 9, 13, 18, and 23 be rejected as being too low and the high bids on each of the remaining twenty-five (25) items be accepted.

s/ Chad Stanger

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It was moved by Councilman Chandler, seconded by Hovey, that the bids of item numbers 9,13, 18 and 23 be rejected as being too low and the high bids on each of the remaining twenty-five items be accepted. Roll call as follows: Ayes, Councilmen Chandler, Erickson, Deist, Hovey, and Wood; No, none; carried.

This memo from the Electrical Engineer was then read:

November 18, 1983

ATTENTION: Mayor and Council
FROM: Steve Harrison, Mgr.
SUBJECT: GEM STATE HYDROELECTRIC PROJECT

The Electric Division requests that the Council consider directing Kent Foster of the law firm of Holden, Kidwell, Hahn & Crapo to initiate condemnation proceedings to acquire certain lands and facilities owned by the Snake River Valley Irrigation District. These certain lands and facilities are required for construction of the proposed Gem State Hydroelectric Project.

s/ G. S. Harrison

It was moved by Councilman Hovey, seconded by Wood, that Attorney Kent Foster of the law firm Holden, Kidwell, Hahn & Crapo be authorized to initiate condemnation proceedings to acquire certain lands and facilities owned by the Snake River Valley Irrigation District. Roll call as follows: Ayes, Councilmen Deist, Hovey, Wood, Chandler, and Erickson; No, none; carried.

From the Public Works Director came this memo:

November 21, 1983

ATTENTION: Mayor and City Council
FROM: Donald F. Lloyd, P.E.
SUBJECT: SUPPLYING CRUSHED GRAVEL IN STOCKPILE

Specifications are now complete for Supplying Crushed Gravel in Stockpile for 1983-1984.

Public Works Committee has reviewed and we are requesting authorization for the City Clerk to advertise for competitive bids.

s/ Donald F. Lloyd, P.E.

It was moved by Councilman Deist, seconded by Chandler, that the Council authorize the City Clerk to advertise for competitive bids for supplying crushed gravel in stockpile for 1983-1984. Roll call as follows: Ayes, Councilmen Erickson, Deist, Hovey, Wood, and Chandler; No, none; carried.

Also, from the Public Works Director, came this memo:

November 21, 1983

ATTENTION: Mayor and City Council
FROM: Donald F. Lloyd, P.E.

SUBJECT: INDUSTRIAL PRETREATMENT PROGRAM

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The City Attorney and the Public Works Office have been working with James M. Montgomery, Consulting Engineers, on an Industrial Pretreatment Program. The final draft of the program has now been submitted to the State and EPA for approval. The actual Ordinance is expected to be submitted to the Council the 2nd meeting in December.

We are now requesting that the Mayor be authorized to indicate the City's approval of the Industrial Pretreatment Program.

s/ Donald F. Lloyd. P.E.

It was moved by Councilman Deist, seconded by Chandler, that the Mayor be authorized to indicate the City's approval of the Industrial Pretreatment Program. Roll call as follows: Ayes, Councilmen Hovey, Wood, Chandler, Erickson, and Deist; No, none; carried.

This memo from the Airport Manager was then read:

November 17, 1983

TO: Honorable Mayor and City Council
FROM: Airport Committee
SUBJECT: CONSENT TO SUBLEASE - PIONEER AIRLINES

Pioneer Airways Incorporated has submitted a signed Consent To Sublease Agreement to provide air service out of Idaho Falls to Riverton, Wyoming and Denver, Colorado.

Pioneer has made independant arrangements with Cascade Airways concerning the sublease of a portion of Cascade's facilities and equipment. Pioneer will operate Swearingen Metro aircraft and will pay to the City the same activity fee as Cascade Airways as well as providing to the City monthly statements and other information required.

The Sublease has been prepared by the City Attorney.

The Airport Committee recommends that the Mayor and Clerk be authorized to execute said Consent to Sublease.

s/ James H. Thorsen

It was moved by Councilman Hovey, seconded by Wood, that the Mayor and City Clerk be authorized to execute said Consent to Sublease. Roll call as follows: Ayes, Councilmen Wood, Chandler, Erickson, Deist, and Hovey; No, none; carried.

Next, from the Airport Manager, came this memo:

November 18, 1983

TO: Honorable Mayor and City Council
FROM: Airport Committee
SUBJECT: ASSIGNMENT OF LEASE - TRANSWESTERN AIRLINES TO HORIZON AIR

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Transwestern Airlines of Utah, Inc. and Horizon Air Industries, Inc., have submitted a signed Assignment of Lease transferring and assigning Transwestern's Airport Use Agreement with the City of Idaho Falls, Idaho to Horizon Air.

The Assignment of Lease has been reviewed by the City Attorney.

The Airport Committee recommends that the Mayor and Clerk be authorized to execute said Assignment of Lease.

James H. Thorsen

It was moved by Councilman Hovey, seconded by Wood, that the Mayor and City Clerk be authorized to execute said assignment of lease. Roll call as follows: Ayes, Councilmen Wood, Chandler, Erickson, Deist, and Hovey; No, none; carried.

Finally, from the Airport Manager, came this memo:

November 9, 1983

TO: Honorable Mayor and City Council
FROM: Airport Committee
SUBJECT: CONTRACT FOR PROFESSIONAL ENGINEERING SERVICES

Ellsworth Engineering has submitted a proposed contract to provide engineering services for the aircraft parking apron extension and rehabilitation project.

Ellsworth will design, prepare contract documents and supervise construction of the parking apron. The Federal Government Airport Trust Fund will pay 90% of the cost of the entire project, and the State of Idaho will contribute 5% of the total, including the engineering expenses.

The contract has been approved by the Federal Aviation Administration and reviewed by the City Attorney.

The Airport Committee recommends that the Mayor and Clerk be authorized to execute the agreement.

s/ James H. Thorsen

It was moved by Councilman Hovey, seconded by Wood, that this matter be deferred for further study. Roll call as follows: Ayes, Councilmen Chandler, Erickson, Deist, Hovey, and Wood; No, none; carried.

There being no further business, it was moved by Councilmen Chandler, seconded by Hovey, that the meeting adjourn at 8:00 P.M., carried.

s/ Velma Chandler
City Clerk

s/ Thomas Campbell
Mayor
