

Mayor David Anderson called the regularly scheduled meeting of May 1, 2012 to order at 7:04 p.m. Present for the meeting were Mayor Anderson, Council President Mike Klaus, Council Members Rick Alonzo, Connie Wells, and Tom Mayo, Clerk Kris Larson, City Administrator Stephen Boorman, Assistant City Administrator Dave Sims, Police Chief Steve Benkula, Water/Sewer Department Supervisor Jim Fritzsche, Fire Chief Pat Warkentin, Economic Development Coordinator Mike Sloan, and Attorney Tim Wilson. Also present were Tremain Albright, Boundary County Commissioner Dan Dinning, Jerry Higgs, Bob Spalding, Marcia Cossette, Gene Andrews, Doug Ladely, Sr., Ruth Sutton, Dale Simpson, Adam Arthur, Jessica Tingley, Dave Gray, Ralph Collett, Mary Collett, Tanna Larsen, Rich Beck, Elaine Marcotte, and Carolyn Testa. Loretta Hunsaker joined the meeting late.

Mary Collett spoke to council and said she has lived at 7495 Crow Street for 35 years and she has worked at the hospital for ten years. Mary said Cheryl Aucutt moved in as a neighbor about five years ago and has complained about Mary's animals. Mary repaired her fence so her dog would not get out but her cat went on Cher's property and it was shot with a pellet gun and later died. Cheryl has trapped another neighbor's cat on her property. Mary said she spoke to City Police and there is nothing in city law that prohibits a person from trapping cats on their property but the person trapping is supposed to call the owners to notify them. This is not being done and the city police did not follow up on the issue. Mary said her daughter is afraid there will be repercussions since Mary has come to city council. She asked council how they would feel if their animals were in danger by a neighbor. Mary feels like she is in prison. She has not gotten positive response from the police officers. Mary is concerned about the animal abuse and the correlation between animal abuse and child abuse and said Cher is applying for a job at Rocky Mountain Academy and is also a foster parent. Rick Alonzo suggested that Mary speak to the police chief and address the concerns of the officers. Police Chief Steve Benkula invited Mary to come visit him in the office. Ralph Collett spoke and said it has been pretty much terrorism for the kids since Cher has moved into the neighborhood. He has witnessed dogs being shot when he is in his garden. Mary thanked council for their time.

Tanna Larsen asked if there is a city ordinance against animal traps in the city limits. Tanna said she went on Cher's property and got her cat without police assistance. Cher has called law enforcement about people trespassing on her property. Tanna, Mary and Ralph left the meeting with Police Chief Steve Benkula.

Jerry Higgs said he has trapped cats and dogs in a humane way. He took the cat to Second Chance Animal Adoption Agency. He also trapped dogs and took them to the owner and to Second Chance. Jerry said the city's ordinances regarding animals need attention and should be fixed.

Jerry Higgs said he was in the court room when the annexation issue was heard. He found it astonishing. He found Will Herrington to be unread on Rule 84 and said he was stupid.

Rich Beck said he spoke with Jim Fritzsche about the work being done on McCall Street because no one was notified about the road being closed. He would have appreciated knowing about the road closure so he could direct the semi drivers to get his freight. Rich asked how long this will be and asked who is responsible so people know how to get to McCall Street and said there should be signage. Rich did not know if the city had the responsibility or if it was Noble Construction. Stephen apologized for not notifying the businesses and said ultimately the city is responsible. Stephen said the road should be open on Thursday evening and there will be work next week but the road should not be closed. Rich asked what the lines were. Stephen said it is a new water line improvement. David clarified that Noble is doing the work and Super 1 is paying for it. Mayor Anderson said he was also surprised that there was no signage. Stephen said traffic should be routed through LaBrosse Hill Road. Rich said his trucks cannot make the corner on LaBrosse Hill Road so they would have to go through the vacant gas station.

Commissioner Dan Dinning handed out a map for the proposed critical habitat for Selkirk Mountain Caribou. He said the majority of the Myrtle Creek drainage is in the caribou critical habitat area and offered to help the council with verbiage in their comments about the habitat area. The habitat area encompasses about 600 square miles. The time of the caribou listing was 1983 and the transplanted animals were brought in the 1990's. Dan said once the critical habitat is established, fire mitigation will not be allowed. He would like to have the city comment on this issue. Dan said the comment period ends on May 21, 2012. There is an intra agency study being done by fish and wildlife for economics but it does not include the local agencies and communities and the impact to them. Mayor Anderson said he wrote a letter to the Congressional Delegation regarding the watershed and said we may well submit written comment before the deadline. Mike Klaus asked if the Governor or Legislators have commented. Dan said there have been formal comments made for the Governor by Dustin Miller. Raul Labrador, Calkins, Rische, and Crapo have also commented. There was a joint statement from Keough, Eksridge, and Anderson. Mayor Anderson said when an animal is listed, any activity in the area that could kill or even scare the animal must be considered, but when habitat is designated then any activity that could harm the landscape itself must be considered. Dan said he knows the issue is understood by the city. David Sims said the city must comment to have standing. Dan said this is important to the community for economics especially for logging and he thinks it would be fun to have a snowmobile trail.

Jerry Higgs spoke about the critical habitat area. He attended the public meeting last Saturday and listed the speakers at the meeting. He wished the council, mayor, or city administrator had been in attendance to represent the city. Jerry said he made the city's points known including the city's watershed. The lead story on KREM 2 tonight was the mud slides in the Myrtle Creek drainage. He said Federal Register 76 states that oral recorded testimony must be made if the city wants to be heard. Council thanked Jerry.

Gene Andrews spoke to council about the car show scheduled for June 2, 2012. He also spoke regarding the hold harmless agreement and the issues that the Car Club has with it. Gene said the Car Club does not think they should hold the city harmless for their own carelessness and negligence; that the hold harmless verbiage is excessive as to the family members, corporations, heirs, assigns, etc.; and that they must agree that the car show is hazardous in nature and can cause death and mortal injuries and they don't agree with this. Also, the hold harmless says it must be signed by all participants and this will not happen. Gene said there is a waiver on the application that they provide to the car show participants. Gene said the car club has insurance naming the city as additional insured for the event. Tim Wilson said it is his job to protect the city and he has spoken to the Car Club's attorney. Tim said the city's hold harmless keeps the city out of litigation. The indemnification, waiver, and hold harmless protect the city but it does not protect the city from gross negligence as this is covered under tort law. He said he spoke to their attorney about this waiver. Since the city has the deepest pockets of the group, the hold harmless needs to be signed if there is an event or the city council can waive the hold harmless agreement if they choose. Basically the city is waiving the city's clearance if they are to get sued. Tim thinks there is more danger when there are open running engines and small children. Mayor Anderson asked if we are at an impasse or if there is something we can do. Gene asked about having each participant sign the hold harmless. Tim said he spoke to the Car Club attorney and has agreed to the wording on the applications that the participants sign. Tim said his end result is that the organization can sign the hold harmless waiver or council can waive the hold harmless. His advice is that the city not waive the hold harmless. Gene said he does not have his questions answered. He asked whose corporation is to be held harmless. Stephen said there needs to be a clear line that the city is not responsible for the actions of the car show. Gene asked for clarification of the heirs. Stephen said it holds the city harmless from any issue arising. Tim said he would be happy to contact Gene's counsel and discuss the issue again.

Will Herrington joined the meeting at 7:50 p.m.

Tremain Albright spoke to council. He said the tree house is due to be cut down. In 1928 the land was deeded as an easement and in 1949 the easement was upgraded and the signatures were notarized. In 1970 the PL84-99 program came into play. The flood level of the Kootenai River is 1764 feet. In 1999 the flood level was established due the Libby Dam and the 200 year flood level is 1770 feet. In 2002 Tremain contacted the City of Bonners Ferry about his building (tree house) to Mike Woodward. It did not meet the building requirements due to it being above the flood level and it being less than 200 square feet. The tree house was built thinking they had asked the questions that were necessary. The tree house is built in a cottonwood tree and is 17.65 feet above the flood level. He feels there is a statement in the engineering plan that is not true. All the trees were cut down on the levees and they left the tree house. In November of the following year Stephen Boorman gave a letter to Albright's that said the tree house had to be ripped and this was done. In May, 2008 the tree house was expanded three feet so the trunks are

inside the tree house. Four years later Stephen and Dave Sims told Tremain there was more interest in the tree house and it may have to be removed. Tremain said they have invested \$14,000 in the tree house. Many requests for meetings regarding the tree house have been ignored by the Corps. Also a letter requesting a meeting with the city was ignored. In August, 2011 the Corps of Engineers eligibility report was given to Tremain by Dave Sims and it said the tree house must be removed. Tremain said the PL84-99 said the levee must be behind the existing levee structure and he will not do this because he won't take down his home. Tremain sent emails to the city while he was in Florida. Tremain stated in his letter to the city that they had addressed the armoring of the levy. His suggestion is to trim the tree so there is no danger of it being blown over. He said the tree is above the 200 year flood level. Tremain was never invited to attend the Corps meetings when they reviewed the tree house. There is an exception to trees being cut on the levees near the fairgrounds due to the width of the levee. He said since 1986 the top of the levy belongs to the property owners because city council gave it to them. He asked council to review the issue. Tremain said if there is an exception for someone else then he wants an exception for his tree house. He believes the city has the initial say and wants them to support him. He understands the need for the PL84-99 program because it is a cost sharing program for maintenance of the dikes. He said a levee is a levee and asks for the same consideration that has been given for the trees at the fairgrounds. He said compensation and fair treatment should be considered. Mayor Anderson explained to Tremain that he followed up on the rip rap and work done on the tree house and he understands that the changes by the Corps have come since then.

Police Chief Steve Benkula gave the police report. He said there have been 40 calls for service, made 54 traffic stops, seven misdemeanor arrests, and two felony arrests, dealing mainly with DUIs and drug arrests.

Fire Chief Pat Warkentin told council that the old fire engine and equipment have been put into a display at the Museum and it is worth taking a look at. Three firefighters were at the Coeur d'Alene training on pumps and ladder trucks and several repairs were done on the engine that was taken to the training. This training is paying off for the city. During the month of April there were seven calls that the fire department responded to.

Stephen Boorman gave the administrators report. He reminded council of the AIC conference in June. There are lifeguards being sought for the summer. Seattle Securities Northwest is doing training on public bonding in Coeur d'Alene in May. Brian Zimmerman is retiring from ISP and going to work for ArtiCat. The Corps of Engineers is having their annual meeting on May 14th at 7:00 p.m. at the Kootenai River Inn regarding flooding. There are pictures of the Myrtle Creek drainage and the mud slides that have occurred. We have had to use water from Cabinet Mountain for two days due to the dirty water that has been coming in from Myrtle Creek. Doug has been working extremely long hours to keep the plant running. The problems are due to the wash outs in the burn area. Some of the mud flows are 30 feet deep waiting to go into the creek.

The Forest Service has not identified funding to fix the problem. David Sims said the slides have been occurring for several weeks. Stephen said there are subsurface springs in the area that may have added to the slide problem.

Mike Sloan said we are still moving forward on the broadband and costs have been established for reaching Canada. The Canadian firm will pay half the cost of this line. The ruling has come through that the bonding for the fiber to the home project can be done by Boundary County.

Connie Wells moved to approve the consent agenda. Tom Mayo seconded the motion. The motion passed – Mike Klaus “yes”, Rick Alonzo “yes”, Connie Wells “yes”, Tom Mayo “yes”. The consent agenda contained the following: roll call; approval of accounts payable and payroll; and approval of April 17, 2012 council meeting minutes.

Mayor Anderson said at the first training for being a mayor he learned that you must listen to your attorney. Attorney Tim Wilson said he does not know why there is so much concern over the hold harmless agreement this year. He said the hold harmless is structured to keep the city from having liability. Tim said the group needs to sign the hold harmless and the car show participants sign a separate liability waiver. Mike Klaus would like the city to be consistent with their procedures. Connie said the main waiver needs to be signed by the organization. Tim will speak to their counsel again. Connie moved to let the Rod Benders Car Club use the parking lot between the museum and the visitor center during their car show contingent on them signing the hold harmless. Rick seconded the motion and it passed, all in favor.

The Deep Creek waterline easement was tabled.

Stephen spoke regarding the Union Pacific Railroad crossing license. He also has some cost estimates to be reviewed. Stephen said we have six months to sign the railroad permit. He also has the applications for the railroad permit and ITD permits ready to submit. The railroad permit requires a payment of \$2,000. Tom asked about the difference in the estimated cost. David said originally we were looking at in-house labor and Welch Comer’s estimate was using contractors.

Mayor Anderson thinks the city should rescind the prohibition against yard waste being picked up partly due to the inconvenience to some of our customers. We have made positive steps toward recycling. Rick asked about how yard waste was handled before it was prohibited. Stephen explained that it was part of the three can limit and it was mostly yard clippings. Tom said if the yard waste is allowed with the garbage pickup that he would hope those that are able to take it to the landfill would still do it. Connie said the reason the city stopped picking up the yard waste was due to the weight and expressed concern about the weight going into the landfill. Mayor Anderson is just looking for a convenience for the aging population since their rates are increasing and with recyclables the garbage should be decreasing. Mike Klaus said the city should do their best to keep whatever they can out of the waste stream. He said we do not know when DEQ will do a weight audit and we could lose the ability to use the landfill. Tom said part

of the problem is not having a handle on the numbers. He said according to Claine the wood and yard waste doubled after the city stopped picking up yard waste but there is no handle on the volume. Rick said he does not think it would add a lot of weight because most people don't have much garbage. Jerry Higgs suggested speaking to the county before making a decision so not to ruffle feathers. Tom would like to find a way to help the elderly with the problem.

Stephen spoke regarding the PL84-99 program. It is a funding program where the Corps pays 80 percent and the city pays 20 percent for maintenance of the dikes and if there is emergency work the Corps pays for 100 percent of the work done. The standards of the PL84-99 program change and that is what we are seeing today. Much of this is due to the Katrina disaster. The tree house and cottonwood tree have been looked at by the Corps twice and they have said the tree has to be removed in order to keep that section of the dike in the PL84-99 program for maintenance.

David Sims said over the last couple years the Corps has done hundreds of thousands of dollars of work. Issues have been identified by the Corps in order for the city to continue to be in the PL84-99 program. The Corps was not concerned about the trees at the fairgrounds because they are outside the prism so they are not being exempted by the Corps, the rules don't apply. David drew a picture on the white board to show what is meant by the prism. The street department has been working on the deficiencies identified by the Corps to correct the issues. David spoke about the diameter of trees to be removed and said we are regulated by the Seattle District. He said more and more regulations are coming forward not only with the river but even from FERC on the power plant.

Tremain said there is nothing in the PL84-99 program identifying the width of the dike. He has not been allowed to meet with anyone from the Corps of Engineers. Tremain is frustrated with the lack of a meeting with the Corps and he would like to have the city set up a meeting with someone from the Corps. Tremain wants answers in writing rather than verbal. Tom Mayo encouraged Tremain to keep trying to get a meeting with the Corps. David gave the history of what happened with the Corps. Tom said this issue is between Tremain and the Corps. Connie said the city does not want him to lose his tree house and Tom added that the city cannot lose the funding from the PL84-99 agreement. David said the Corps had four concerns other than wind shear and they are not concerns that the city has passed on to the Corps, the Corps came up with the list. David said the PL84-99 program is with the city and the Corps has no obligation to the resident, the agreement is between the city and the Corps. Mike Klaus said as much as he likes the tree house he cannot jeopardize the city's interest in the PL84-99 program and gave the example of flooding in the picture of the 1948 flood but does not want to risk an event like that. David does not think the Seattle Corps can have a variance to the levee standards. Tremain said his letter was sent to the city not the Corps because his task was to write a letter to the city. Tremain said his inspection report that was done by the Corps was not true. Mike Klaus suggested getting a building permit now and an inspection. David Sims said the city must comply or they are out of the PL84-99 program. Stephen said Tremain only has to go down the

dike to the county area to install his tree house because they are not in the PL84-99 program. David said the city cannot change the requirements of the PL84-99 program developed by the Corps. Stephen said he has not seen a clean proposal from Tremain on his plans for the tree house. Tremain said if the city allows an exception such as the fairgrounds that he wants the same exception. Tom said the city is not allowing the exception, the Corps said the trees at the fairgrounds are not causing levee damage. Tremain read a portion of his letter to the city. Tremain said Greg Hoffman has looked at the tree house and has tried to represent Tremain at meetings with the Corps. Mayor Anderson said what Tremain wants is a one on one meeting with someone from the Corps about the tree house. Tremain agreed. Stephen said in 2006 a letter from the Corps said if the tree was rip rapped that it could stay in accordance to the Corps standards at that time. Tremain is not looking to be illegal or for the city to lose the cost sharing of the PL84-99 program. Mayor Anderson told Tremain to get a brief together for him and he will work with the Congressional Delegation to get someone to meet with Tremain. Mayor Anderson said the city will not forfeit their participation in the PL84-99 program.

Tom Mayo moved to approve the special event permit for the Pawsitive Works Dog Run on May 26, 2012 at the fairgrounds. Rick Alonzo seconded the motion. The motion passed – Mike Klaus “yes”, Rick Alonzo “yes”, Connie Wells “yes”, Tom Mayo “yes”.

Mike Klaus moved to approve the parade permit for the American Legion Memorial Day parade on May 28, 2012. Connie Wells seconded the motion. The motion passed – Mike Klaus “yes”, Rick Alonzo “yes”, Connie Wells “yes”, Tom Mayo “yes”.

Rick Alonzo moved to hire Bruce Dally as a seasonal worker at the dam. Tom Mayo seconded the motion. The motion passed – Mike Klaus “yes”, Rick Alonzo “yes”, Connie Wells “yes”, Tom Mayo “yes”.

Connie Wells moved to authorize advertisement for summer parks part time work. Tom Mayo seconded the motion. The motion passed – Mike Klaus “yes”, Rick Alonzo “yes”, Connie Wells “yes”, Tom Mayo “yes”.

The Corps of Engineers is moving forward with the dike repair project. There is an in-kind memo for the Mayor’s signature. The work comes to \$24,240 and the city is to pay \$5,560 for the cost share. Connie Wells moved to authorize the Mayor to sign the in-kind memo for dike work and authorize payment. Tom Mayo seconded the motion and it passed – Mike Klaus “yes”, Rick Alonzo “yes”, Connie Wells “yes”, Tom Mayo “yes”.

Mike Klaus moved to table the sewer lagoon fencing. Rick Alonzo seconded the motion and it passed, all in favor.

David said he has spoken to the county about them doing some weed spraying on a time and material basis. Rick moved to have the county weed spray for the city with payment made on a

time and material basis. Connie Wells seconded the motion. The motion passed – Mike Klaus “yes”, Rick Alonzo “yes”, Connie Wells “yes”, Tom Mayo “yes”.

Tom Mayo moved at 9:25 p.m. to go into executive session per Idaho Code 67-2345 (1) (f). Connie Wells seconded the motion. The motion passed – Mike Klaus “yes”, Rick Alonzo “yes”, Connie Wells “yes”, Tom Mayo “yes”. Tim Wilson left the meeting. Executive session ended at 10:43 p.m. No action was taken.

There being no further business, the meeting adjourned at 10:43 p.m.

David K. Anderson, Mayor

Attest:

Kris Larson, City Clerk