

Minutes of the Special Meeting of the City Council of the City of Lava Hot Springs, Idaho held Thursday, April 29, 2010 at 5:30 p.m., Lava City Hall, 115 West Elm Street, Lava Hot Springs, Idaho.

Present:

Marshall N. Burgin, Mayor

Rita Anderson, Councilperson

Phillip Beeson, Councilperson

Newton J. Lowe, Councilperson

Cathy Sher, Councilperson

Canda L. Dimick, City Clerk

Clyde Nelson, Attorney (participated by speaker
phone)

R.B. Scott, Code Enforcement Officer

The mayor called the meeting to order at 5:30 p.m.

Planning & Zoning

A) Decision in the matter of Sam Netuschil's application for an off-street parking variance for Lot 5; E 3.75' Lot 6, Block 8, Townsite of Hall City.

A motion was made by Councilperson Sher and seconded by Councilperson Anderson to authorize the mayor to sign the Statement of Decision in the matter of Sam Netuschil's application for an off-street parking variance for Lot 5; E 3.75' Lot 6, Block 8, Townsite of Hall City. All voted aye, unanimous.

B) Statement of Facts, Findings and Recommendation in the matter of Michael J. Atkins application for a required corner lot size variance for Lots 1 & 2, Block 13, W.J. Fife's Addition.

A motion was made by Councilperson Beeson and seconded by Councilperson Sher to accept the Planning and Zoning Commission Statement of Facts, Findings, and Recommendation in the matter of Michael J. Atkins application for a required corner lot size variance for Lots 1 & 2, Block 13, W. J. Fife's Addition. All voted aye, unanimous.

C) Statement of Facts, Findings and Recommendation in the matter of Henry & Kathy Etcheverry's application to permit an accessory use on a vacant lot, Lots 1, 2, 3 & 4, Block 10, High School Park Addition.

Councilperson Sher questioned the 50 year agricultural "grandfather" clause and asked if there isn't any other condition that the city might be overlooking that might put the city at risk. The attorney asked what 50 year agricultural exemption she was referring to. The attorney stated that Mr. Etcheverry has been using the land for grazing for several years.

Councilperson Sher questioned if this is causing a hardship. The attorney explained that according to the city ordinance and state statutes, the hardship that is created must be applicable due to some nature of his property that is not applicable to other properties in that same zone. It always applies to the size of the lot, such as what was considered on Atkin's variance that was granted on a smaller size corner lot than would normally be required. Atkin's variance is a good example of where a variance would be granted on size of lots, size of buildings on lots, setbacks, etc. A variance is an improper procedure for Mr. Etcheverry to have used in this case. The only thing that Mr. Etcheverry could do is to make an application for a text change to the zoning ordinance to allow storage sheds on a vacant lot.

Councilperson Anderson stated that the common sense approach has gone out the window. The Etcheverry's have probably been using the property for longer than most of the council has been in Lava. There are no neighbors around that the use would interfere with in her opinion. She said that she can see where this could be a hardship because Mr. Etcheverry needs a place to store equipment and supplies. The Etcheverry's have been good citizens in Lava. There is an accessory structure right in her neighborhood. Councilperson Beeson and the mayor stated that the accessory shed on Mr. Zabka's property is a legal accessory structure because Mr. Zabka combined his lots with the house. Councilperson Anderson asked if the accessory buildings across the alley were combined with his house. The mayor stated that they were not. He said that those accessory buildings were protected by statutes of limitations by the previous council.

Councilperson Anderson said that she feels that not granting this variance is imposing undue hardship on the Etcheverry's. Councilperson Beeson stated that Mr. Etcheverry has stored the equipment and salt in his mother's garage for ten (10) years, every since the old house was torn down. If it was such a hardship, they would have put up a building before now. The county records prove that it has been ten years since the old house was taken off the tax rolls. Councilperson Anderson questioned an improvement in 2004 shown on the county tax record. The mayor stated that the improvement is the illegal car port covering the camp trailer (sheep herder's camp).

The attorney stated that the tax rolls show that the house was removed before the tax assessment in 1999. If there were a house on the property, Mr. Etcheverry would be allowed to put accessory buildings on the property. He explained there are three (3) items in city ordinance and state statutes that Mr. Etcheverry cannot meet which are, the city's one (1) year to replace a non conforming use, and the fact that the building was torn down over ten (10) years ago and the state statute of ten (10) years for continuing the non-use of a non-conforming use.

Councilperson Lowe stated the city has two (2) streets and an alley plotted which go through the pasture. In the near future the city may want to put the streets and alley in, at which time the use as a pasture is done. Mr. Etcheverry is grazing off city property. The mayor stated that the developer has the right to develop access to their property.

Councilperson Beeson stated that the ordinance doesn't allow for this variance to be granted because it does not meet the criteria for a variance.

Etcheverry will receive a copy of the Planning & Zoning Commission Facts, Findings and Recommendation and the Council's Statement of Facts, Findings, and Decision when the variance process is complete. The city clerk stated that the council will need to establish a date to order the removal of the shed (cargo container) if the variance is denied.

The mayor reported that the Prosecutor has informed him that the Etcheverry's are going to remove the shed. The shed hasn't been removed yet.

A motion was made by Councilperson Lowe denying Henry and Kathy Etcheverry's variance application for a storage shed on their vacant lot. The motion was seconded by Councilperson Beeson. Beeson – aye, Lowe – aye Anderson – nay, Sher – nay. The council vote was a split decision. The mayor voted aye to deny the variance. The motion was approved.

A motion was by Councilperson Beeson and seconded by Councilperson Lowe to adopt the Planning and Zoning Commission Statement of Facts, Findings, and Recommendation and authorize the city clerk to prepare the council decision and order the structure to be removed by May 25, 2010. Anderson – aye, Beeson – aye, Lowe – aye, Sher – nay. The motion was approved.

Motion to adjourn into executive session as authorized by Idaho Code 67-2345 1(f) to discuss probable zoning litigation matters with legal counsel.

A motion was made by Councilperson Beeson and seconded by Councilperson Sher to adjourn into executive session to discuss zoning litigation matters as provided by Idaho Code 67-2345 1(f). Lowe – aye, Sher – aye, Anderson – aye, Beeson – aye. Unanimous.

Present for executive session:

Marshall N. Burgin, Mayor
Rita Anderson, Councilperson
Phillip Beeson, Councilperson
Newton J. Lowe, Councilperson
Cathy Sher, Councilperson

Canda L. Dimick, City Clerk
Clyde Nelson, Attorney (participated by speaker phone)
R.B. Scott, Code Enforcement Officer

Motion to reconvene.

A motion was made by Councilperson Beeson and seconded by Councilperson Lowe to reconvene. All voted aye, unanimous.

Decisions regarding probable zoning litigation matters.

No decisions.

Adjournment

A motion was made by Councilperson Sher and seconded by Councilperson Lowe to adjourn. All voted aye, unanimous.

The meeting adjourned at 6:41 p.m.

Patricia Avery, Transcriber

Marshall N. Burgin, Mayor

Canda L. Dimick, City Clerk (proof read)

Approved 5-13-10