

CITY COUNCIL MEETING MINUTES
Regular Session: TUESDAY, January 16, 2018
@ 7:00PM at Notus City Hall

1. Meeting Called to Order

Meeting was called to order at 7:02 pm by Mayor, David Porterfield.

2. Roll Call

Roll call was taken with the following results: Council women Mo Shamseldin and Michelle DeGiorgio; present. Councilmen Clint Berends and Richard Wallace, Jr; present. Also present Mayor, David Porterfield and City Attorney, Todd Lakey. Resident, Renee Taylor interrupts meeting by calling out "Objection". Mayor recognizes her. She states "you cannot do legal roll call on an unelected official to a City Council seat." She asks for the objection to be noted in the minutes. City Clerk so notes. Mayor continues meeting by calling for the next agenda item.

3. Pledge of Allegiance

4. Public Concerns, Comments

Mayor recognizes Resident, Renee Taylor. (*CLERKS NOTE: the following comments are verbatim) Renee Taylor, "City Council it is your duty and responsibility to make sure that election laws are upheld. In saying that to you, it is unlawful to anyone to sit on council seat that has not been duly elected by registered voters of Notus, or appointed by you, the representatives of the city of Notus. No offense to you (Clint). You have been misled. Therefore, to do anything otherwise is diligent for you to uphold those laws because you swore an oath, as you were sworn in, to uphold the constitution, including the Idaho State laws. I object wholeheartedly that you have not followed this law. There was a vacancy that was canvassed by you and filed with the Secretary of State's office. A vacancy left in November to fill the term 2018, 2019, 2020. It is his (Mayor) responsibility to bring his name back to you to vote for the following two years. Any questions about that? To do anything differently, you are courting to help break the law. And I won't sit back and watch that."

Mayor, "Thank you"

Wallace Jr, "I thought we did vote on that".

DeGiorgio, "We did in November when he brought it, but because.." Mayor interrupts.

Mayor, "We will get into some things to follow up on that in just a moment, OK?"

Mayor continues meeting by calling for the next agenda item.

5. Approval of Meeting Agenda, as posted

Mayor asks for a motion to approve the agenda. DeGiorgio comments that she doesn't see anything about the Ranger on the agenda. Mayor states he will comment about that later in the "Mayor and Council Comments".

Shamseldin asks if we want to add 11.6 for Renee's objection? Wallace Jr comments he believes that is what the executive session is all about. Shamseldin comments that she didn't take it as that but is that what we are going to use that for? Mayor comments that we do have content related to that in the executive session. Shamseldin comments that she will let that rest then.

Shamseldin motioned to approve the agenda as presented. Wallace Jr seconded. Voice vote. All in Favor. Motion passed.

6. Community Relations

6.1 Notus School District

NONE

6.2 Canyon County Fire District, Andy Cater

NONE

6.3 Transportation Report, Tina Wilson

NONE

7. Executive Session: (Idaho Code 74-206(1)(b)(f)) Personnel, to consider complaints or charges brought against a public officer or employee and to communicate with legal counsel regarding threatened or potential litigation.

DeGiorgio motioned to go into Executive Session: (Idaho Code 74-206(1)(b)(f)) Personnel, to consider complaints or charges brought against a public officer or employee and to communicate with legal counsel regarding threatened or potential litigation at 7:10 pm . Wallace Jr seconds. Roll call was taken with the following results: DeGiorgio; yes, Wallace Jr; yes, Berends; abstain, Shamseldin; yes. Motion passed.

Wallace Jr motioned to leave Executive Session at 7:37 pm. DeGiorgio seconded. All in Favor. Motion passed.

Council resumes regular session at 7:38 pm.

Mayor comments that Council has had discussion with City Attorney, Mr. Lakey about the complaint voiced by Renee and turns meeting over to Mr. Lakey to address Renee Taylor directly.

(*CLERKS NOTE: the following comments are verbatim at the request of the Mayor)

Mr. Lakey, "Thank you Mayor, Council, and Renee. It is an unusual situation, the way that the dates and everything fell. When the appointment was made, when the election was and the filing deadline to be on the ballot to fill the vacancy. The Association of (Idaho) Cities, the Canyon County Elections Office, and also the Secretary of State through the Canyon County Elections office have advised that Clint's appointment is valid and correct in the way it was handled. I have reviewed it and I think that is the most reasonable interpretation of the statute. The statute we are looking at is 5704 which says: 'a vacancy in the council shall be filled by appointment made by the Mayor with consent of the Council'. So that's how the process works. And the determination of which general election applies is based on the appointment that is filled. So, this appointment, technically there's no requirement, it could have gone on for another month. But he had a September 8th filing deadline to be on the ballot at the last November election. Clint was appointed October 2nd, so after that filing deadline for the November election. So, it's filled by appointment by the Mayor with consent of the Council. And then it says, 'which appointee shall serve only until the next general city election'. So, if you stop right there, you would say well he's appointed October 8th, the next general election is the November election. But it doesn't stop there, it says "at which such vacancy shall be filled for the balance of the original term'. So, it's the next general election that can be used to fill the vacancy. It's not the vacancy that determines the next general election, it's the appointment that determines the next general election. So, Clint was appointed October 2nd, after the filing deadline, so there wasn't anybody or there wasn't an appointee yet to determine when the next general election is that could be used to fill that vacancy. Being appointed on October 2nd after the filing deadline, the next general election that could be used to fill a vacancy is the next general election, whenever that one is in 2 years from November. So that's the interpretation of AIC, the Elections Office, and The Secretary of State and like I said, I think that I can see, Renee, where you're coming from but I think that's the most reasonable interpretation based on looking at the statute as a whole."

(*CLERKS OBSERVATION/NOTE/COMMENT) **An argument/discussion ensues covering various subjects within this topic. In my opinion, it only belittles the participants and adds little to no value to this meeting other than to disrespect the City Administration, City Officials and Appointed Staff for doing their job correctly which was verified and confirmed by County and State offices.**

Renee, "So how is that handled on the ballot? It was on the ballot for election, that two year term."

Mr. Lakey, "From my understanding, it wasn't on the ballot."

Mayor, "Would you like me to speak to that?"

Mr. Lakey, "If you want to Mayor, sure."

Mayor, "I believe that there was a mistake on the ballot that introduced some lack of clarity. The ballot read vote for three, listed the mayoral candidates and then listed the City council candidates. We had two city council positions that a who's terms were expiring. So those would be naturally on the ballot. So that instruction to vote for three left you to decide among those four persons listed on the ballot, as to where you were going to place your three votes. To be a

little more correct the ballot should have listed, for mayor vote for one, listing the two names. For City Council vote for two and listed the names. So, I think there was confusion on the ballot. But it didn't negate anything that has to do with this appointment."

Mr. Lakey, "In other words, nobody had been appointed yet for that vacant position, and you don't determine the election until that appointment is made. Then after the appointment is made. After the appointment is made then you look at what is the next general election. But the deadline to file for that election had already passed."

Renee, "except for the write-in candidacy. Declared write-in candidacy was not expired. So someone could have come in and after his appointment and declared a write-in candidacy for that position. Now that would have clarified right then and there..."

Mayor interjects, "That position was being filled by appointment."

Renee, "Dave, don't try and explain election laws to me. We know how well you know how election laws go."

Mayor, "Thank you."

Renee, "That's not a compliment!"

Mr. Lakey, "Renee, like I said that's AIC's interpretation, County office, and Secretary of States..."

Renee interjects, "Wouldn't it be just to be correctly right with the voters to just appoint him to the Council seat?"

Mayor, "He has been appointed to the council seat."

Renee, "you just said there was a problem with the ballot. Now you've opened up another can of worms."

Mayor, "I said that it doesn't negate the appointment."

Mr. Lakey, "I don't think the issue is with the ballot effecting Clint's appointment."

Resident, Phil Ryan interrupts, "Wouldn't it be easier, before we just keep on going about this and people lose their tempers and whatever, just acknowledge that there was a mistake made. An innocent mistake. And ask the gentleman to step down for one meeting, call the whole thing back up, reappoint him for the same thing we are talking about and we'll get rid of all this stuff here."

Wallace Jr, "if the state says we didn't do anything wrong, County says we didn't do anything wrong. Then what have we done wrong? Even the AIC says we didn't do anything wrong."

Renee, "But you opened up the candidacy vacancy in July. The only reason that it didn't get filled until then, because you went through other people. Until HE (mayor) found the person HE wanted on the City Council. It was a timeline HE pushed back towards that November election..."

Mayor interjects, "Your Idaho code set..."

Renee interrupts, "I DON'T CARE! The vacancy.... I'm answering your question, the vacancy occurred when Jerry walked, stepped off the Council. He (Mayor) started getting names to put on the Council seat. That's when the vacancy opened. Because the appointment wasn't done until October, wasn't because there wasn't a vacancy for the 2018 2020. You would not have this problem if you assign these seats. Like I've said before. Then you wouldn't have these problems. That's one of the things is secures. Is that when there is a vacancy on the Council seat that those terms are on for the voters to vote on."

Wallace Jr, "And Jerry's seat is not due up until 2019."

Renee, "Well it wasn't, just because you dragged it out until October doesn't mean it wasn't."

Mr. Lakey, "I agree that the vacancy was there."

Renee, "Ya."

Mr. Lakey, "But, the next general election is tied to the appointment not the vacancy."

Renee, "Your splitting hairs. That's because you drug it out. YOU (Mayor) drug it out."

Mayor, "No."

Renee, "YES YOU DID!"

Mayor, "I provided for every possibility for the Council to confirm a candidate and a there were times when that was turned down or delayed. There were times when there was no quorum available to be able to have a meeting to be able to proceed with the appointment. So, we took the proper steps to schedule a new meeting after each one of those situations and to bring the name forward. And so, at every point we covered the occasion that arose, whether it was a rejection or delay or lack of quorum to have a meeting, and brought that to the attention and the vote of the Council at the most immediate time possible."

Mr. Lakey, "And so that's my summary, what you do beyond that is up to you (Renee).

Renee, "Well someone owes this gentleman (Councilman Clint Berends) an apology for putting him in this position".

Councilman Berends responds, "Nobody owes me nothing".

Resident Phil Ryan, "I would just like to say that you've (Berends) done nothing wrong. You probably feel like you're in the hot seat. But this is the way government goes. I don't like things. You know what I'm saying? And I don't like the fact that you're sitting in the hot seat right now and we need people like you to be here to help with these decisions. And we have to keep our personalities out of it. We need to be just black and white, no gray areas because we can't tell what's going to happen during this time period that you might be in here. Something big might happen and we might not have the people to vote or we, you might be blamed for part of the problem, you know. And you might be innocent and you just got captured here, you know what I mean? It's nice having you here."

Berends, "I read what you (Renee) wrote to me and what went to the elections officials and what went to the state and their responses. And I feel like they were given the timeline of the events that happened. And they responded accordingly that it was done correctly and that I would be up for election in 2019. That I would still be on the seat. That was their response. I feel they did do it correctly and ..."

Renee interrupts, "So when you came in on city council seat were you aware of that you were filling all the way till 2020?"

Berends, "I would be filling a two year term, yes."

Renee, "Were you told that?"

Berends, "Yes, because it was..."

Renee, "That's interesting when the vacancy declared was not."

Berends, "When I was appointed on Oct 2nd, not when I we started discussing this. When Dave approached me originally, he said that if we got it in before that November 8th deadline, a that September excuse me, that I would have to, that it would happen and then I would have to be elected after that. We discussed it and I thought it over whether or not I wanted to after he said would like to ask them the appoint me. When it original happened, they wanted to know me more and it was turned down. And at that time, I believe it was before the..."

Mayor adds, "It was right after the expiration date of the filing. That happened on the 11th of September but we had also been prepared to present you name on the 5th."

Renee, "Was that the write in deadline? There is two deadlines."

Mayor, "Well right in..."

Renee, "There is the intent to be a candidate and the intent to be a write-in candidate and those are two separate deadlines."

Mayor, "The write in has to be for an open seat. Or a seat being voted on, on the ballot. Not for a..."

Renee, "I know that Dave! And I said, to the general public they were aware of they were going to vote for 3 different positions on the city council. You yourself just said that there was a misunderstanding on the ballot that could... yes, so we've gone down that road before. I'm saying that you missed the deadline for September and you went into the write-in candidacy deadline which is on the heels of that one."

Mayor, "No, we didn't miss that one because we had it scheduled."

Renee, "You never admit when you are wrong."

Mayor, "Well I'm sorry. This time I'm right."

Renee, "No you're not."

Mayor, "yes I am. Renee if you would like to continue further discussions on this we'll schedule a time for that to happen. For this evening we need to move on and cover some other business."

Renee, "So why did I not receive a response prior to this meeting?"

Mayor, "Your addressed..."

Renee interjects, "I was told by your legal counsel that I would be followed up with you."

Mayor, "You addressed you letter to Mr. Lakey. I only learned of your objection through him and so it was not in my court to do provide you with any other response. I was dealing with Mr. Lakey as the one that was given this information of your objection. And so, we scheduled things in accordance. I'm not trying to lay blame on him for anything, I'm just saying that had you come

to us with this question we would have been in this discussion and we would have given you this information ahead of time.”

Renee, “So a common decency letter saying ‘I’ve received your concerns and we are looking into it’ doesn’t fair well with you in that you should have done that?”

Mayor, “You didn’t ...”

Renee, “See you don’t do that.”

Mayor, “You didn’t address us with that so I was only going back through the channels from which it came. I’m sorry that seems odd to you but that just happens to be the appropriate channel.”

Renee, “In your eyes.”

Mayor, “Good.”

Councilwoman Shamseldin, “Renee, do you want copies of what the responses were?”

Renee, “NO, I don’t.”

Shamseldin, “O.K.”

Renee, “I think this is ludicrous. I think its.. your, your... the reason I am saying this is because...BECAUSE of the fact that *maybe* the grey area over here the law says because of the time line, yet we’re not taking into consideration the write-in candidacy time line. We can let it get a free pass. I get that. But what I don’t get is obligation to be more forthright with the citizens, registered voters of the city. They didn’t know that when they went to the ballot box. Most people thought they were voting for three city council persons. They really did. So, I get that. So it might be prudent of you to put that in your mind and think, ‘OK do I listen to what he says, or do I listen to what he says, I have this in front of me, as a Council. But the citizens of this town deserve better. Protect their right to vote and their vote counts. That’s why I’m an advocate of this.”

Wallace Jr, “It’s also the individual’s responsibility to know what is going on, on the ballot before even going to the ballot box.”

Renee, “You know that’s a faux pas that’s been said for eons and it doesn’t always necessary work. That’s why the State of Idaho goes back, as he (Mr. Lakey) can attest, and re-visit the election laws and everything else, *all the time*. That’s why there is amendments, that’s why there’s re-visiting to these laws, cause there’s always a grey area. And we slipped into one here. There always is. It’s happened in the past. But it might be a good idea if you understand the importance of assigning these seats. Instead of a run off race. That’s the problem, is the three as a run off. But if they were individually boxed seats, 1,2,3,4. Whatever they are. It’s such a educational, simple process to walk in it. You vote how many times a year and you want everybody to remember all the different rules that go on. I’ve hear everything humanly possible at the polling places that voters say. And yes it is preponderant on them to know this before they get there, but they don’t understand the process because it gets changed. You have your primary’s, you have your levy’s and general elections and so on, and so on, so on. And there are different things you do in those elections. And different ways. And so it’s hard to educate the public. They come in and you have to tell them.”

DeGiorgio, “And in the workshops at the elections, they tell the senior judges and the poll workers that, ‘don’t argue with them. You can not tell them who’s a write-in. You can not tell them what the correct spelling of a write-in is. You can’t’, I mean there’s a lot of stuff.”

Renee, “But they changed that. They just changed that. We have a list and we can show it to them. They just changed that last year. I’m just saying this is one of the reasons why you might want to seriously consider that. Changing the way you do your elections here and getting away from the run off races. Then there’s no questions. Then you’ll have a box for seat that’s 2 year, 4 year term or whatever. Then you won’t have this happen again.

Mayor, “OK, Thank you.”

Mayor continues meeting by calling for the next agenda item.

8. Consent Agenda

8.1 Disbursement List

Shamseldin motioned to pay the disbursements as presented. Wallace Jr seconded. DeGiorgio asks for receipts to be attached to statements. Roll call was taken with the following results: Shamseldin; yes, Wallace Jr; yes, Berends; yes, DeGiorgio; yes. Motion passed.

8.2 Council Meeting Minutes

Mayor asks for correction on 9.1 He believes DEQ is *working* on the process the NPDES permits not doing it yet. Clerk will review audio tape. DeGiorgio thinks that 6.2 motion 2nd is incorrect. Clerk will review audio tape. Mayor would like items on 12. to show he only wanted sketch and DEQ letter showing clearance. Wallace Jr motioned to approve meeting minutes of 1-2-18 with corrections as needed. DeGiorgio seconded. Roll call was taken with the following results: Wallace Jr; yes, DeGiorgio; yes, Berends; yes, Shamseldin; yes. Motion passed.

8.3 Committee Meeting Minutes: Library, Community Events.

Wallace Jr motioned to accept library meeting minutes from Sept. 13, Oct. 11 Nov 18, 2017 and accept Toni resignation letter and Notus Community Events Committee minutes from Sept. 5, 12, 26, 2017, Oct. 3, 10, 19, 2017 and Jan.9, 2018 as written. Shamseldin seconded. Roll call was taken with the following results: Wallace Jr; yes, Shamseldin; yes, Berends; yes, DeGiorgio; yes. Motion passed.

9. Staff Reports

9.1 Public Works

NONE

9.2 Library Liaison

NONE

9.3 Treasurer

Marie handed out December revenue/expenditure reports.

10. Professional's Reports

10.1 Wastewater

Mayor comments that Mike Black reported no discharge until February. We will need to renew our NPDES permit by October 1, 2018. The new upgrades made to the lagoons may require trials of the new systems and new tests. Shamseldin comments that we need a contract with Mike Black or replace him.

10.2 Engineer

NONE

10.3 Crestline Engineers

Antonio reported the scoring for the 2 grants we applied for was last week. We should know something next week where we scored. If he knows something earlier he will let us know.

11. Business:

11.1 Building Code Amendments Ordinance Adoption

Mayor comments that the State has amended their building codes. Our building inspector suggests the City adopt the new State code with no amendments. This keeps uniformity between state, county and City regulations.

11.2 Crestline Culvert Repair Task Order Approval

Antonio states the funding grant for the culvert repair on Notus road has been granted to the City. Surveying can start this week. Plans will be submitted to the state. Start of work will be weather dependent. Wallace Jr motioned to approve the culvert repair task order and get it

done. Berends seconds. Roll call was taken with the following results: Wallace Jr; yes, Berends; yes, Shamseldin; yes, DeGiorgio; yes. Motion passed.

Councilwoman DeGiorgio leaves meeting at 8:52 pm.

11.3 USDA Sewer Improvement Loan Resolution signature

Wallace Jr motioned to approve and sign the loan resolution authorizing and providing for the incurrence of indebtedness for the sewer system upgrade project loan in the amount of \$1,305,000 and grant in the amount of \$380,000. Shamseldin seconded. Roll call was taken with the following results: Wallace Jr; yes, Shamseldin; yes, Berends; yes. Motion passed.

11.4 Personnel Policy Workshop dates

Personnel policy review set for January 29th, 2018 at 6:00 pm.

11.5 Support for Marcy's Law

Wallace Jr comments that he is full support of Marcy's Law. Shamseldin states she is also in support. Mayor comments that we will work on a support resolution in support of Marcy's Law.

12. Mayor & Council Comment

Mayor reports that the Ranger was picked up from DeMark Auto Repair and broke down in front of old lumber yard. It was returned to DeMark and is still there. John Deere tractor is at J&J Tractor for repair.

13. Adjournment

Wallace Jr motioned to adjourn at 9:12 pm. Berends seconded. Voice Vote. All in Favor. Motion passed.

Respectively submitted by Loretta Vollmer, City Clerk _____

David Porterfield, Mayor _____