

CITY COUNCIL MEETING NOVEMBER 15, 2011, 7:00 P.M. COMMUNITY CENTER  
PUBLIC HEARING JOHNSON VARIANCE

**PRESENT:** Mayor Brad Andersen, Council President Jane Shaw, Council member Dennis McArthur, Council member Bruce Case, Council member Dan Gubler, City Clerk Robyn Keyes, Public Works Supervisor Zech Prouse, Treasurer Ron Nelson, Police Chief Shannon Basaraba

**VISITORS:** City Attorney Dale Storer, Dee Johnson, Allen Eldridge, Jesse Vosika, Tim Vosika, Coire Vosika, Jolyn Louk, Sally Louk, David Louk

Mayor Andersen welcomed everyone and Council member McArthur led with the Pledge of Allegiance.

**Recognize Scout Jesse Vosika.** Mayor Andersen asked Jesse Vosika to explain his Eagle Scout project. Mr. Vosika said he refinished all of the wooden signs at the City building and the park.

Mayor Andersen thanked Mr. Vosika for his hard work and efforts. The Mayor said the Council and City employees appreciate the efforts of the Scouts.

**Consent Agenda.** The minutes, financial report and budget report were reviewed. The Mayor pointed out that for each month into the fiscal year the budget revenues and expenditures should increase by 8.33%. Treasurer Nelson explained that the first month of the new fiscal year typically showed different percentages than normal because of some quarterly payments and spending.

Mayor Andersen entertained a motion from the Council.

Council member McArthur made a motion to approve the consent agenda.

Council member Case seconded the motion.

All were in favor, motion carried.

**Public Hearing 7:15 Variance Request Johnson**

A public hearing was held to consider a variance request by Dee Johnson to build an accessory building on the property line adjacent to an unused ditch easement. The Council approved the request. See appendix A for hearing minutes.

**Public Hearing 7:30 Title 11 Formatting Changes**

The hearing was recessed until January's Council meeting to have time to review the changes.

**Discussion of Police Contract.**

Attorney Storer said the law enforcement issues were not new: they had been issues for many years between city and county enforcement. Storer said the issue was a difficult situation and one which could not be resolved easily. Storer said from what he gathered, the Bonneville County

Sheriff had issues with how to apportion the law enforcement costs across the County, then how to fund the costs. Storer believed the County's perspective regarding ways to fund the cost was through property taxes and fees. The fees could come from various sources such as vehicle license and registration fees, or fees to cities within the County, such as the proposed contract from the Sheriff. Storer said the question arose as to how the County law enforcement service was spread out across the county and the cost of those services. The County could argue that many county residents were farmers, and farmers did not require the same level of service as a city residents would. The City could argue that city areas were compact, therefore more cost effective. Storer said if you look back at the minutes for the City of Idaho Falls when it was deciding to form its own police department, the concerns were the same as the were now for many other cities: the level of service was mediocre compared to the level of pay for that service.

Attorney Storer said, that according to State law, the Sheriff was required to enforce state penal laws throughout the County and they could not charge a fee or send a bill to enforce those laws. If the City felt it was being treated unfairly by the County it could go to court: however, most judges would be reluctant to try to second guess how a Sheriff ran his department.

Council President Shaw said the Sheriff was not required to enforce City Ordinances, but if he chose to enforce them the Sheriff could not bill the City for the service. Attorney Storer said that was correct.

Mayor Andersen asked the Attorney if the Sheriff could raise the contract fee from \$25,000 to \$83,000 in one year.

Attorney Storer said the Sheriff needed to be proportionate between all cities for what was charged for services. Therefore, someone would need to go through the Sheriff's records or the City's records provided by the Sheriff then compare those records and charges to those of the other Cities in the County to see if justification could be made for the increase in charges.

The Attorney said another choice would be to not pay the fee, accept the level of service that was being offered by the Sheriff, and supplement that service with City run law enforcement. Storer said the City could contract with other cities or counties for backup coverage or perhaps discuss the possibility of Joint Powers with those cities or counties.

Chief Basaraba said the first time the Sheriff came out to meet with the City, the Sheriff said the City would need to pay for extra services, such as patrolling the area more frequently. But the second time the Sheriff visited the contract amount had increased but the level of service remain as it was, without extra service and back-up. The Chief said the City was only asking for the same level of service as the county residents received.

Attorney Storer said the Sheriff was required to respond when called to anything that fell under the State Penal Code, such as felonies and misdemeanors, and the Sheriff could not charge a fee for that response.

Chief Basaraba asked if the Sheriff could call himself (the Chief) out to help respond to events outside the City limits.

Attorney Storer said he would look into the issue, but he thought that if the City police chief was called out by the County and the Chief refused to go the incident could be reported to the Governor.

President Shaw said the Sheriff was responsible for providing equal service for all of the tax payers: Shaw asked if the Sheriff did not respond to a call in Iona, could the City be held liable.

The attorney said the City could not be held liable for the County's actions.

Council member Gubler noted that, in his contract, the Sheriff was including the animal shelter and the dispatch fees. Gubler said those were separate contracts from that with the Sheriff.

Jolyn Louk said she was concerned with the rise in crime in the area and lack of adequate patrol, and who would respond when Chief Basaraba was off duty. She was also concerned with back-up for the Chief.

Attorney Storer recommended the City look into possible back-up solutions for the City officer when he was off duty.

The Mayor and Council thanked Attorney Storer for his time and input.

### **Approval of Park Closure.**

Mayor Andersen said the possibility of closing the public parks at night was discussed at the town hall meeting and the majority of the people in attendance were in favor of the idea. Some people thought 11:00 p.m. was a suitable time, some people thought midnight was, and others did not want the park closed at all, but rather the curfew law enforced.

The Mayor entertained a motion from the Council.

Council member McArthur made a motion to approve closure of the City parks at 11:30 p.m.

No one seconded. The motion died.

Council President Shaw made a motion to approve closure of the City parks at 12:00 a.m.

Council member Case seconded the motion.

All were in favor. Motion carried.

### **Approval of Attorney Contract**

Mayor Andersen said Attorney Storer's contract was up for renewal and his fee remained the same as last year.

Clerk Keyes said the Attorney helped her with many issues.  
Mayor Andersen agreed the Attorney was helpful and involved with many City issues.

Council President Shaw made a motion to approve the Attorney contract.

Council member Gubler seconded the motion.

All were in favor. Motion carried.

### **Approval of Cable Franchise Renewal**

The Cable Franchise renewal was tabled until next meeting because the ordinance was not ready.

### **Acceptance of Canvass of Votes**

The acceptance of canvass of votes was tabled until the next meeting because the Clerk had not received the information from the County.

### **Discussion of New Park**

Mayor Andersen said he was sending a survey with the water bill asking for public opinion regarding a splash park or a swimming pool in the City.

The Council agreed the survey would be helpful, and once the surveys were returned the Council would like to discuss the results before making a decision.

Mayor Andersen agreed and recommended the Council try to encourage people to attend the meeting.

### **Reports**

Council President Shaw, no report.

Council member Gubler said the new fire station was progressing.

Council member Case asked if the Council was finished or a decision had been made regarding the Sheriff's letter and a contract.

Mayor Andersen said he would set up another meeting with Sheriff Wilde to discuss the City's perspective in person.

President Shaw made a motion to go into executive session per Idaho Code 67-2345 (1) (a) to consider personnel matters.

Council member Gubler seconded the motion.

Roll call as follows:

AYE: Council President Shaw, Council member Gubler, Council member Case, Council member McArthur.

NAY: None.

Executive meeting began 8:55 p.m.

Executive meeting adjourned 9:15 p.m.

Council member Gubler made a motion to add Rocky Mountain Environmental Proposal and the new police car to the agenda.

Council member Case seconded the motion.

Council members Case, Gubler, and McArthur were in favor: Council President Shaw had to leave before the motion. Motion carried.

Council member Gubler made a motion to approve the addition of more visible lettering to the new police car.

Council member Case seconded the motion.

All were in favor. Motion carried.

Council member Case made a motion to approve Rocky Mountain Environmental water right and mitigation proposal.

Council member Gubler seconded the motion.

All were in favor. Motion carried.

Meeting adjourned at 9:25 p.m.

APPENDIX A  
PUBLIC HEARING 7:15 P.M. JOHNSON VARIANCE REQUEST

**PRESENT:** Mayor Brad Andersen, Council President Jane Shaw, Council member Dennis McArthur, Council member Bruce Case, Council member Dan Gubler, City Clerk Robyn Keyes, Public Works Supervisor Zech Prouse, Treasurer Ron Nelson, Police Chief Shannon Basaraba

**VISITORS:** Dee Johnson, Allen Eldridge, Jesse Vosika, Tim Vosika, Coire Vosika, Jolyn Louk, Sally Louk, David Louk

Mayor Andersen welcomed everyone, went over the procedure for the public hearing, and turned the time over to Mr. Johnson.

Mr. Johnson explained that he wanted to construct a 24 x 16 shed along his eastern property line. Johnson would like to place the east side of his shed on the property line and use the right-of-way between his property line and the row of trees as an entrance to the shed therefore giving him adequate distance between the shed and the existing garage. The shed would be placed two (2) feet further back than the front setback of the house and it would have the same exterior siding as the house as required by the covenants in Ashwood Acres. Mr. Johnson explained that he side setback was adjacent to an easement for an abandoned ditch, and adjacent to the ditch easement was the regular easement for the street. Johnson said the shed would not interfere with the line of vision for traffic at the corner.

Mayor Andersen asked if anyone in the audience would like to speak for, against, or neutral regarding the request. No one spoke.

Mayor Andersen closed the public portion of the hearing and opened discussion to the Council.

Council member Case asked whose property the gravel lane was on for Mr. Johnson to enter his shop.

Mr. Johnson said the property was not being claimed by anyone: the City said it belonged to the irrigation company as an easement, but the irrigation company said the ditch was abandoned and the property belonged to the City.

Council member Gubler asked if the neighbors within 300 feet of the property were notified. Clerk Keyes said they were.

Council member Gubler said if the property did not belong to anyone then it should be deeded to the adjacent homeowners.

Mayor Andersen agreed, but said the City did not own the deed to the property so the City did not have authority to do so.

Supervisor Prouse said according to Progressive Irrigation some homeowners in Rose Valley still owned the water rights, and even though the ditch was not currently in use so it could not be vacated.

Mayor Andersen said the Planning and Zoning commission recommended approving the variance with the property owner's understanding if the shop needed to be removed because the easement was needed, the cost of removing the shop belonged to the property owner.

Mr. Johnson said he understood that the cost would belong to the property owner.

Council member Case read the requirements per the City Code for granting a variance, one of which was the request must warrant a hardship.

Case said the Council needed to be uniform in its granting of variances, and did the homeowner show hardship. Case said he would rather clear-up the property and deed it to the adjacent homeowners.

Council President Shaw said hardship was too difficult to define.

Council member McArthur made a motion to approve the variance.

No one seconded the motion therefore it died.

Council President Shaw said she believed a hardship could apply to this request because no one was claiming the property yet the homeowner had been maintaining it.

Council member McArthur made a motion to approve the variance under the hardship that the homeowner was responsible for maintaining the property, and if the irrigation company or the City needed to perform work in the easement the shop may need to be removed at the homeowner's expense.

Council President Shaw seconded the motion.

Roll call as follows:

AYE: Council President Shaw, Council member Case, Council Member McArthur,  
Council member Gubler.

NAY: None.

Motion carried.

Hearing closed at 7:35 p.m.