

**CITY OF KUNA
SPECIAL CITY COUNCIL MEETING
MINUTES
PROPERTY VALUES IN WILD MEADOWS
SUBDIVISION
JULY 31, 2006
KUNA CITY HALL COUNCIL CHAMBER, 763 W. AVALON**

NOTE: These minutes are an unofficial record of this City Council meeting until reviewed; corrected if deemed appropriate and formally approved by the Kuna City Council at a subsequent Council meeting.

Mayor Dean Obray called the Special City Council Meeting for discussion of property values in Wild Meadows Subdivision to order at 7:00 p.m.

Present: Mayor Dean Obray; Council President Lang, Council Members Scott Dowdy, Councilwoman Stroebel and Richard Cardoza. City Attorney Randy Grove; City Treasurer Colleen Cook; and Interim Planning & Zoning Director Diana Sanders.

City Attorney, Randy Grove stated that the purpose of the meeting was to answer questions posed at the last Special Meeting on property values in Wild Meadows and the Best Bath manufacturing business. Mr. Grove stated in 1998, Best Bath requested to relocate business from Boise to Kuna; this action prompted the following applications and meetings:

- 1) September 1, 1999 the City received an annexation application and preliminary plat for Swan Falls Business Park.
- 2) September 28, 1999 preliminary plat hearing by the Planning & Zoning Commission.
- 3) September 30, 1999, the City received a letter from Van Hees, developer of Swan Falls Business Park, mentioning fiberglass.
- 4) Swan Falls Business Park was created specifically for Fiberglass Systems (Best Bath). Swan Falls Business Park had been considered for a time before but there was not a viable business to go into the business park until Fiberglass Systems came along.
- 5) At the September 28, 1999 Planning & Zoning hearing, they recommended approval to the City Council of the Swan Falls Business Park preliminary plat. The 2003 Comprehensive Plan identifies that area as industrial growth.
- 6) At the November 16, 1999 City Council meeting, the Council approved the plat for subdivision of Swan Falls Business Park.
- 7) A time extension was granted on October 2, 2000.
- 8) The final plat for the business park was approved March 26, 2001.
- 9) On December 12, 2000, the City received a design review application from Fiberglass Systems.
- 10) January 30, 2001 the design review came before the Planning & Zoning Commission who gave approval. During the meeting, noise and odor issues were discussed; that is all that was transcribed in the meeting minutes.
- 11) On March 16, 2001, the City received an application for annexation and a preliminary plat for Wild Meadows Subdivision.
- 12) Most of the homes in Wild Meadows were purchased before Fiberglass Systems put their building up. He stated that he was not quite sure why there was such a delay on

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- Fiberglass Systems part for not moving forward quickly in building and establishing their business after the approval of their final plat on March 26, 2001.
- 13) Mr. Grove spoke with Best Bath's executive that there were some financial difficulties. Following the September 11, 2000 events, there was a significant downturn in the economy at that point.
 - 14) Correspondence in the file showed that the Mayor and Council did whatever they could to try to get Best Bath to move into the community.
 - 15) A grant for \$500,000 was awarded for public improvements for the Swan Falls Business Park. Improvements were made to the City's potable water supply delivery system and roads.
 - 16) At about the same time, the City undertook the responsibility for creating an industrial development corporation. There is a section in State Code providing for industrial development corporations and governing for those corporations to get industrial revenue bonds. This is public money available for private industry essentially to use rather than having to go out in the public sector to get their own funding. It doesn't appear that the industrial bond was pursued, interest rates dropped after September 11, 2000.

Mr. Grove further reported that there were accusations at the last Special Meeting that there were some nefarious activities or underhanded dealings associated with the business park development. In looking at the documentation, there does not seem to be any evidence that suggests those actions. Mayor Nelson was seeking Council's approval for a bill of \$150,000 of grant fund money to developer, Larry Van Hees. The money was not paid to him directly out of the grant fund money; it seems to have come from the water fund and the grant fund money reimbursed the water fund. More legal research must be conducted before it can be determined whether the transaction was legal. Research so far indicates that money expended by the developer was not eligible for reimbursement from the grant fund money. The last year of Mayor Nelson's tenure in office, 2003, the payment of \$150,000.00 became an issue and was referred to the Ada County's Prosecutor's Office for investigation. The investigation was turned over to Canyon County; then on to Gem County. Insufficient evidence led to dropped charges.

Mr. Grove reported that he recently toured Best Bath's facility in Boise and confirmed that the order is very strong inside the building. He pointed out that styrene is not a carcinogen, it is a neurotoxin. It will have some effect on the nervous system, cause headaches, etc. Over the long term, it will affect health. Best Bath meets EPA limits, so there is no evidence at this time that it will cause problems. The City did not require a special use permit in the past for this business; but the City can require Best Bath to get a special use permit now. If the City Council decides that they will pursue requiring Best Bath to get a special use permit, it will require public hearings before the Planning & Zoning Commission. Is Best Bath business heavy or light manufacturing? He recommended that the City not issue any building permits until a special use application is approved by Planning & Zoning Commission.

David Nehen, 681 E. Wild Lilac Ct., asked if Best Bath would need a special use permit to operate as heavy industrial.

Mr. Grove responded that State Code is not specific.

Mr. Nehen asked if Best Bath is operating currently in Kuna as light industrial.

Mr. Grove responded that outdoor storage is outside of their approval.

Mr. Nehen asked where policies exist to investigate and enforce zoning codes.

Mr. Grove responded that Interim Planning & Zoning Director Diana Sanders handles the complaints that are brought to her. He stated that the City does not have enough staff to go out and investigate businesses unless a specific complaint is lodged.

In response to Mr. Nehen, Mr. Grove stated that Best Bath is out of compliance because of items stored outside the building. They have approval for their existing operation.

Mr. Nehen stated that it was his understanding that zoning laws are written so a City can control what specific types of businesses reside in their City and if the business is operating outside the zoning definition, they would be in violation and the City would need to enforce the existing zoning. He asked if there are policies and procedures in place to investigate and enforce zoning violations that pertain to individual businesses.

Sherry Harper, 557 E. Huckleberry, asked if the business could relocate,

Mr. Grove answered that there is no way the City can ask them to move their business. The City can only put restrictions on the business activities through a special use permit.

James Henrickson, 554 E. Wild Jasmine, stated he was one of the neighbors that filed a zoning violation complaint; will he be notified of the outcome of that complaint?

Mr. Grove responded that Mr. Henrickson can call Planning & Zoning and find out the outcome of his complaint.

Mr. Henrickson asked what emergency plan is in place if Best Bath catches on fire, or chemicals are stored on site?

Mr. Grove responded that the Sheriff and Fire Departments are separate entities from the City and that they could best address emergency plan questions.

James Miller, Deer Horn Subdivision, asked what would be the impact to the Birds of Prey with these chemicals being diffused into the air.

Cathie Ashby, 1472 Melinda Ln., asked if Best Bath would be grandfathered in at old emission standards or would they have to meet the new levels?

Mr. Grove stated that there are different permits for the two locations for the Boise operation and they are allowed to emit 330 tons of years. Their current operation emits 50 to 60 tons per year. Their permit for Kuna is for a maximum emission of 245 tons per year. For example, if they

emit around 60 tons, their operation here in Kuna could be 4 times larger and still be within the parameters of what they are permitted to emit.

Bill Roulo, 625 S. Red Oak, held up a label of one of the primary compounds that is being used in Best Bath's processing. He read a warning on the label regarding unsaturated polyester embalmer which stated that repeated exposure may cause central nervous system affects or kidney and liver damage.

Mr. Grove responded that this issue should be dealt with at the special use permit hearing.

Carol Ann Hofhines, 630 S. Red Oak Ave., asked if the city investigated, at the time permits were issued, the exact types of chemicals that would be used in Best Bath's manufacturing process.

Mr. Grove stated that he did not find anything in the records that suggested that the City did at that time. He felt that the City should have required Best Bath to get a special use permit and that did not happen.

Mrs. Hofhines asked if the City Attorney, in his research, found whether the City had investigated the types of chemicals before they allowed subdivisions to be built right next door to Best Bath.

Mr. Grove responded that he saw no evidence that the City did.

Mrs. Hofhines asked if the City would reimburse the homeowners if the value of their homes declines.

Mr. Grove answered that the City will not reimburse. Homeowners may have recourse against the developer and real estate agents. He strongly encouraged each homeowner to investigate these avenues.

Don Corsley, Sparrow Estates, stated that his subdivision has been in existence for 15 years. He was very concerned about the strange smells but did not know they were coming from a plastic plant. He was especially concerned about the fact that the plant could increase in size 3 times and that property values could drop.

Mr. Grove apologized that Mr. Corsley was not notified. All he can do now is try to help the City make the best decision it can with the situation that exists.

Carl Abramson, 644 E. Wild Lilac, asked could you give me the size of the current facility that Best Bath occupies.

In response to Carl Abramson, 644 E. Wild Lilac, Mr. Grove stated that the current facility occupied by Best Bath in Boise is between 40-55,000 square feet.

Mr. Abramson asked if there are there berms to contain spills. At a July 11, 2006 DEQ hearing, Best Bath wanted three smoke stacks. He said that they are below DEQ standards in Idaho.

An unidentified speaker, 496 S. Sailer Place, asked Planning & Zoning for blue prints of the proposed building with the smoke stacks, landscaping and what Best Bath would look like completed. P & Z told me they don't have that paperwork. She asked whether Best Bath has a Tier I or Tier II permit from DEQ.

Mr. Grove stated that he did not know whether Best Bath's permit was a Tier I or Tier II.

Unidentified Speaker from Wild Meadows stated that the code definition does not allow dust, odor or smoke in light industrial and requested a cease and desist order. He requested a qualified study of their operations. He didn't think property values have dropped and noted that the City did not require a special use permit before, so we are now dealing with an existing situation.

Bobbi Sailer, 1185 E. Kuna Rd., stated that she had called the Kuna Fire District and announced that they have a hazmat team 5 hours away. Some of the chemicals are carcinogenic that Best Bath uses. She wondered what are short and long-term effects will be.

Tim Reeves, Wild Meadows Subdivision, asked if the City has a definition of a non-conforming use.

Mr. Grove stated that the non-conforming use does not apply in this case because the zoning approval was granted before the plant was built.

Darrin Snyder, 538 Wild Jasmine, asked if Kuna tried to force Best Bath out of the City, would there be a lawsuit.

Mr. Grove responded undoubtedly.

William Eddie, Wild Meadows, asked what information is required, whether the neighbors would be noticed for a special use permit process.

Mr. Grove responded that it will be very difficult for the City to place conditions on Best Bath dealing with an unknown risk or a risk that there really isn't any evidence to support. A special use permit requires a public hearing by the Planning & Zoning Commission and the meeting will be published in the newspaper and written notice will be mailed to properties within 300 feet of Best Bath and posted on the property.

David Nehen, 681 E. Wild Lilac, asked if the City writes, enforces and interprets their ordinances.

Mr. Grove responded that every local entity that promulgates regulations or rules in this case, is responsible for enforcement and interpretation. He stated that current interpretation of the documents for approval for Best Bath seems to be in conflict and it is not really clear sure about

what the City was intending when they allowed this use on this piece of property without a Special Use Permit. He will continue to research the matter.

In response to Nathan Davis, 483 E. Huckleberry Ct., Mr. Grove outlined the special use process and explained that the public will be allowed to testify at the Planning & Zoning Commission meeting to discuss a Special Use Permit for Best Bath.

Wayne Craig, 895 S. Jump Rope Place, asked if the building permit for the first phase had been completed.

Mr. Grove explained that the first phase has been completed. Any new construction on the building will require a new building permit for additional construction to be approved by Planning & Zoning.

Mr. Craig asked if Best Bath is not in compliance now, can City deny more construction

Mr. Grove stated that the City will not issue any new permits until the Special Use Permit is completed.

Al Zigon, 483 E. Red Bud Ct., asked if the developer was under the impression that light industrial in the business park meant light industrial and assumed that whatever businesses that would go into the business park would adhere to those same requirements. If the home buyers made the same assumption, what recourse would the homeowners have.

Joel Schmidt, 651 S. Black Oak Ave., suggested looking into what it would take to get Best Bath to move instead of suing everybody.

Mayor Obray responded that the CEO of Best Bath has indicated that it would cost approximately \$3.2 million to buy out Best Bath. Further, the funds would need to be paid within 6 months.

In response to Mr. Schmidt, Mr. Grove responded that a general obligation bond has to be approved by 2/3 of the voters in the City.

Sari Duncan, 898 Trini, asked why City didn't require a special use permit.

Mr. Grove responded that City officials in the past should have required a special use permit; all the City can do now is go back and correct the oversight.

In response to David Martinez, 1046 Wild Yucca and a speaker from Red Bud Ct., Mr. Grove responded that the Council will have to meet and discuss a number of different issues and Best Bath will be required to submit an application for a special use permit. The Council will meet tomorrow to discuss its course of action.

James Henrickson, 554 E. Wild Jasmine, asked if meeting notices would be published. Will misdemeanors be issued if odors violate the City's ordinances? Can citizens appeal to the City Council?

Councilman Dowdy reiterated to the audience that the Zoning Code Section 5.1-6-2 is a definition of what can be expected in an M-1. Council does not know at this time is whether or not the previous City Council allowed Best Bath to have some exception to the definition. The City will need to research the meeting tapes; it has only been six days since our first meeting on this matter.

Joseph LaRose, 749, E. Huckleberry Court, asked why no action has been taken since the Zoning Ordinance says no odors.

Councilman Dowdy stated that the Council is responsible for the tax dollars of every citizen in the community, not just the residents that live in Wild Meadows. The Wild Meadows subdivision was previously zoned industrial yet there were citizens in this community that lobbied very hard in 1998 to make that area R-6 residential to the subdivision could be built.

Unidentified Speaker: Suggested that the City, DEQ and Best Bath work together to find a way to not impact the residents of Wild Meadows and protect them against hazardous materials.

Councilman Dowdy responded that the Council has relied on the investigation conducted by City Attorney, Engineer and the Planning & Zoning Department.

Richard Area, 262 W. Trophy, provide means of egress for the fire department to the south side of the tracks, before Council considers letting the plant expand.

In response to Richard Area, 262 W. Trophy, Attorney Grove responded that, until an overpass is constructed, the only method of access for the fire department is across Bridge St. and Swan Falls.

Ms. Sanders was directed to provide a copy of materials distributed at the last meeting to the rest of the City.

In response to Marty Elhart, 375 San Mateo Ave., Mr. Grove responded that residents should attend the Planning & Zoning hearing to testify. The emissions of Best Bath are perceived to be a threat, but haven't been proven to be a threat. That is the difference.

Sue Keller, 495 E. Red Wood, asked if Best Bath will hold a public meeting next Monday.

Mr. Grove responded that Best Bath will give an informational meeting on Monday, August 7, 2006 at 7:00 p.m. at City Hall.

Josh McFadden, Sailer Ct., stated that the issue is the responsibility of the whole community. He wondered why it was ignored when it was a problem for a long time, not just a Wild Meadows issue only.

Tim Gordon, 1206 Black Cat, asked how many acres are designated for Best Bath. What about City policing policies? Can Planning & Zoning decision to be appealed to the Council and can conditions be placed on the Special Use Permit..

Gary Multanen of Best Bath responded that the property consists of 12 acres.

Mr. Grove explained that the City has broad police powers to deal with health and safety issues.

Nathan, 483 E. Huckleberry Court, asked if meeting notices could be added to the water bills.

There being no further business to conduct, the meeting was adjourned at 9:20 p.m.

O. Dean Obray, Mayor

ATTEST:

Colleen Cook, City Treasurer

DATE APPROVED: August 15, 2006