

**KUNA CITY COUNCIL MEETING  
MINUTES  
APRIL 21, 2009  
KUNA CITY HALL COUNCIL CHAMBER, 763 W. AVALON**

**7:00 p.m. – REGULAR COUNCIL MEETING**

**1. CALL TO ORDER AND ROLL CALL**

M/Dowdy called the meeting to order at 7:01 p.m.

**PRESENT:** Mayor Dowdy, Council President Lang and Council Members Bachman and Stroebel. C/Cardoza was excused.

**ALSO PRESENT:** City Attorney Randy Grove, City Engineer Gordon Law, P&Z Director Steven Hasson, City Clerk Lynda Burgess, City Treasurer John Marsh, Planner Troy Behunin, Planner Tech Maranda Obray and GIS Mapper Mike Borzick.

**2. INVOCATION:** The Invocation was given by Pastor Chris Bent, Kuna Calvary Chapel.

**3. PLEDGE OF ALLEGIANCE:** The Pledge of Allegiance was led by Mayor Dowdy.

**AMEND CONSENT AGENDA TO MOVE ITEM 4.F “APPROVE LICENSE FOR SALE OF LIQUOR BY THE DRINK AND ON PREMISE BEER – COWGIRLS SALOON & TEQUILARIA, 353 AVENUE E” TO NEW BUSINESS, 7.F.**

Moved by C/Lang, seconded by C/Bachman to amend the Consent Agenda. Motion carried 3-0-1 (C/Cardoza absent).

**4. CONSENT AGENDA:**

Moved by C/Lang, seconded by C/Stroebel to approve the Amended Consent Agenda. Motion carried by the following Roll Call vote:

**AYES:** Lang, Bachman, Stroebel  
**NOES:** None  
**ABSENT:** Cardoza

A. APPROVED MINUTES OF REGULAR MEETING OF APRIL 7, 2009.

B. APPROVED ACCOUNTS PAYABLE DATED APRIL 17, 2009 IN THE AMOUNT OF \$93,518.43.

- C. APPROVED BUSINESS LICENSE FOR JENNIFER L. SCHMECKPEPER, "CONSIGN AND DESIGN", 439 MAIN ST.
- D. APPROVED BUSINESS LICENSE FOR T.J. HOFHINES, "DEAD ON ARCHERY", 2676 N. LORTON PL.
- E. ADOPTED RESOLUTION R08-2009: AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE CONSENT TO USE WITH THE BUREAU OF RECLAMATION TO ESTABLISH CONDITIONS TO ALLOW CITY TO CROSS BADLEY LATERAL AND SOUTH RAILROAD LATERAL WITH POTABLE WATER LINES.
- G. APPROVED LICENSE FOR SALE OF OFF PREMISE BEER AND WINE – KUNA SUPER C STORE, 331 AVENUE D.
- H. APPROVED LICENSE FOR SALE OF OFF PREMISE BEER AND WINE – BIG SMOKE, LLC, 1031 E. KUNA RD., SUITE 150.
- I. APPROVED LICENSE FOR SALE OF OFF PREMISE BEER AND WINE – JACKSON'S #26, 330 W. 3<sup>RD</sup> ST.
- J. APPROVED LICENSE FOR SALE OF ON PREMISE BEER AND WINE – FIESTA GUADALAJARA, 780 E. AVALON ST.
- K. APPROVED LICENSE FOR SALE OF ON PREMISE WINE – SILVER TRAIL WINERY, 1299 N. SCHOOL ST.
- L. APPROVED LICENSE FOR SALE OF ON PREMISE BEER AND WINE – IDAHO PIZZA CO. (GREY BOBOLI, INC.), 331 AVENUE E.
- M. APPROVED LICENSE FOR SALE OF ON PREMISE BEER – PIZZA HUT (NPC INTERNATIONAL), 271 AVENUE D.
- N. APPROVED LICENSE FOR SALE OF LIQUOR BY THE DRINK AND ON PREMISE BEER – LONGHORN LOUNGE, 458 W. MAIN ST.
- O. APPROVED LICENSE FOR SALE OF LIQUOR BY THE DRINK AND ON PREMISE BEER – LEFFLER'S UPTOWN COFFEE AND BISTRO, 762 E. WYTHE CREEK CT. #103.
- P. APPROVED LICENSE FOR SALE OF LIQUOR BY THE DRINK AND ON PREMISE BEER – REDEYE (CK ENTERPRIZES, LLC), 414 W. MAIN ST.
- Q. APPROVED BUDGET PUBLIC HEARING DATE OF AUGUST 18, 2009, 7 P.M. IN THE CITY HALL COUNCIL CHAMBER.

**5. CITIZEN'S REPORTS OR REQUESTS:**

**6. OLD BUSINESS:**

WATER'S EDGE/LAKETOWN SUBDIVISION - -09-03 TE (PRELIMINARY PLAT TIME EXTENSION) (Continued from April 7, 2009).

P & Z D/Hasson reported that this subdivision was a PUD that came before Council in 2003 and approved with conditions. It was a mixed use proposal but never built. Six years have passed and they are asking for an extension in part for financing. He was concerned that because of its age, it may be out of scope with current standards and he considered recommending a refusal of an extension. He reviewed the time extension ordinance conditions and met with the applicants. He agreed to ask Council for a 1 year extension. The developer is willing to amend the development agreement and gain a special use permit. P&Z D/Hasson asked for the extension with a provision to amend the development agreement and a special use permit.

Chuck Miller, 5867 W. Hidden Springs Dr., speaking for Steven Ribeiro and Aldeia, LLC stated that they have reviewed the amended ordinance and zoning maps and the comp plan draft. They felt there isn't a problem and agreed with staff's recommendation.

Moved by C/Lang, seconded by C/Bachman to approve the one-year time extension for Water's Edge subject to a revised and updated development agreement and special use permitting process. Motion carried 3-0-1 (C/Cardoza absent).

**7. NEW BUSINESS:**

A. RECEIVE AND FILE STAFF REPORT PREPARED BY THE CITY ENGINEER REGARDING BANKRUPTCY FILED BY H2 EXCAVATION, INC., CONTRACTOR FOR THE INDIAN CREEK PIPELINE PROJECT AND DISCUSS AS APPROPRIATE.

M/Dowdy reported that the city hasn't received official notification about the bankruptcy but the owner of H2 Excavation verified that they would file bankruptcy. They are in default on the project since they have stopped working on it. The city needs to move forward with the bonding company to see what can be done.

CE/Law indicated he assumed the Council would want him to follow through with the bond and take appropriate action.

C/Stroebel asked what stage the project was at.

CE/Law responded that the project was between 90% and 95% complete. In response to C/Stroebel's question about pricing on the bond that would affect completion, he indicated that with a contractor that doesn't know all the details; there could be a tendency for prices to be higher.

In response to M/Dowdy, CE/Law stated that there have been emails and one phone call with the surety. They are scheduled to meet on Tuesday next week. He was hopeful

that there will be some direction from the meeting. Right now things are in limbo.

M/Dowdy asked for regular updates.

**B. RECEIVE AND FILE STAFF REPORT PREPARED BY THE CITY ENGINEER REGARDING RIGHT-OF-WAY VACATION AT GREENBELT PARK AND RIGHT-OF-WAY PURCHASE AT THE WWTP AND DISCUSS AS APPROPRIATE.**

CE/Law reported that there have been two issues in front of ACHD: vacation of the right-of-way in the greenbelt area and purchase of the right-of-way at the WWTP on Ten Mile. ACHD has agreed to pay for the work on the Ten Mile right-of-way. The greenbelt right of way would be exchanged at square foot for square foot on Kuna Mora Rd. If acceptable to the Mayor and Council, ACHD would schedule the hearing.

In response to C/Stroebel, CE/Law indicated that the greenbelt area is in the original town plat, it's a natural type of right-of-way to vacate. He stated that ACHD would like direction from Council to make the right-of-way swap. It amounts to about an acre in the park.

Council agreed that CE/Law should proceed in his negotiations with ACHD.

**C. ADOPT RESOLUTION NO. R9-2009 AWARDED BID FOR DEER FLAT PROJECT WATER LINE TO HI-GRADE UNDERGROUND, INC. IN THE AMOUNT OF \$229,0563.55.**

CE/Law reported that 17 bids were received for the Deer Flat road widening project ranging from \$204,000 to \$376,000. The low bidder left off some significant items that would be considered fatal to responsiveness to the bid and after contacting the bidder, the bidder acknowledged he had missed the items. CE/Law took that as the bidder understood he had a fatal response to the bid. He then contacted the second lowest bidder and notified them the bid would be given to Council for approval. He recommended that Council dismiss the lowest bid and award the project to the second lowest bidder Hi-Grade Underground in the amount of \$229,000 and authorize the Mayor and City Clerk to proceed with the award.

Moved by C/Bachman, seconded by C/Lang to adopt Resolution R9-2009. Motion carried 3-0-1 (C/Cardoza absent).

**D. PROCLAIM MAY 3 THRU MAY 9, 2009 AS "MUNICIPAL CLERKS WEEK."**

Mayor Dowdy read the proclamation.

Moved by C/Lang, seconded by C/Stroebel to approve May 3 thru May 9, 2009 as Municipal Clerks Week. Motion carried 3-0-1 (C/Cardoza absent).

**E. PROCLAIM MAY 1, 2009 AS "ARBOR DAY."**

Mayor Dowdy read the proclamation.

Moved by C/Bachman, seconded by C/Lang to approve May 1, 2009 as Arbor Day.  
Motion carried 3-0-1 (C/Cardoza absent).

F. APPROVE LICENSE FOR SALE OF LIQUOR BY THE DRINK AND ON PREMISE BEER – COWGIRLS SALOON & TEQULARIA, 353 AVENUE E.

M/Dowdy asked that the application be removed from the consent agenda because there have been issues with the applicant and application. The information provided from Mr. Hansen at Cowgirls indicates an expanded foot print from which he is currently serving alcohol. The applicant never asked the City Council to expand his foot print last year. The foot print on file with the state corresponds to the foot print approved by the city last year. Basically, Mr. Hansen has asked for renewal of an existing license with an unapproved expanded foot print. It is an improper request. There is a criminal case pending against Mr. Hansen for serving alcohol in unapproved areas and the trial is scheduled for June of this year. Mr. Hansen has not come before council since the citation was issued to request the expansion. M/Dowdy indicated he is unsure if Mr. Hansen is knowingly or unknowingly trying to pull fast one on the Council or not. He's asking for an expansion from Alcohol Beverage Control, which he has not submitted to the city. ABC has denied the request because he has some overlap areas from a portion that he is trying to sell and the portion that he is trying to expand. Overlap is illegal and not allowed by the state. He requested that Council postpone the issue because of the flaws in Mr. Hansen's request and what he is entitled to request and the manner in which he is doing it.

Lt. Kody Aldrich reported that Mr. Hansen received a criminal citation for not obtaining approval for expansion of his premises and no alcohol license for Tannin's Wine Bar. Further, the state also hasn't approved the expansion currently utilized by Mr. Hansen. There are pending criminal and administrative cases against Cowgirls. Lt. Aldrich explained that he has attempted to discuss the outstanding issues with Mr. Hansen; however, Mr. Hansen has not responded appropriately. Under city code, a grandfather establishment cannot expand in any way if it's within 300 feet of school district property.

M/Dowdy stated that Mr. Hansen has repeatedly maintained that he is not subject to the City's ordinances and flagrantly disregards them. He asked ABC to give an update to the Council.

Corporal Tim Davidson, Idaho State Police, Alcohol Beverage Control displayed the current footprint approved by the state which matches the footprint approved by the City. Mr. Hansen is in violation of selling alcohol outside of his approved footprint. In response to M/Dowdy's question whether the ABC will file charges, Corporal Davidson indicated that would be up to his supervisor and the Attorney General's office.

M/Dowdy further explained that Mr. Hansen continues to ignore the City's offers of help. There are issues that need to be investigated before the City approves an extension of his

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license. P & Z Director Hasson, Lt. Aldrich and the ABC have all been in contact with Mr. Hansen and suggested that Mr. Hansen appear before Council and answer some questions as to why he's operating outside his approved foot print.

C/Bachman indicated that the proposal in front of Council is to reduce the foot print. It seems confusing. The copy of the State and County license doesn't include a copy of the proposed foot print. Mr. Hansen thinks he's reducing the foot print and the state says he's expanding and he's operating where he's not supposed to.

LT. Aldrich explained that the approved foot print on file with the city is the same as the state had on file prior to the July meeting when he brought the additional foot print request to the city. Mr. Hansen added area in July but was never approved. It looks like he's reducing from the unapproved submission in July. He's adding to his current on file foot print.

C/Stroebel stated that it sounds like there are issues. The meeting held last July did approve the expansion.

M/Dowdy responded that the purpose of the July meeting was to determine if a new special use permit was needed. The Council decided he didn't need a new special use permit but Mr. Hansen never submitted for approval of an expanded foot print. There is a separate issue between a special use permit and following the license requirements.

C/Stroebel stated that the city needs to change its code because the code does not state that applicants must submit to the city every time.

M/Dowdy and Lt. Aldrich agreed that the city's code does require a new submittal every time a change is sought.

C/Stroebel disagreed by stating that the code only indicates a new submittal is needed if a licensee changes locations.

M/Dowdy reiterated that Mr. Hansen never submitted an update to the state either.

C/Stroebel agreed that that's the problem.

Lt. Aldrich reported that the citation was issued prior to the July meeting.

M/Dowdy indicated that Mr. Hansen has the right to be present at a meeting before final action is taken.

It was agreed that Mr. Hansen should be allowed to testify and M/Dowdy asked for a transcription of the July meeting.

CC/Burgess indicated that the recording of the July meeting was unintelligible making transcription impossible. The written minutes of the meeting indicated that Council voted was to allow Mr. Hansen to use his special use permit.

Moved by C/Bachman, seconded by C/Lang to continue the matter to the May 5, 2009 regular meeting.

CA/Grove pointed out that since Mr. Hansen's license expires on May 1, 2009, this will be treated as a new application, not a renewal.

**8. PUBLIC HEARINGS:** 7 p.m. or as soon thereafter as matters may be heard.

**9. ORDINANCES:**

DISPENSE WITH FULL READING AND THREE CONSECUTIVE READINGS  
ORDINANCE NO. 2009-13: AN ORDINANCE OF THE CITY OF KUNA, IDAHO,  
ANNEXING 1653 W. SECLUDED CT., ALSO KNOWN AS PARCEL S1322141926 INTO  
THE KUNA MUNICIPAL IRRIGATION SYSTEM AND CHANGING BOUNDARIES  
THEREOF; DIRECTING THAT COPIES OF THIS ORDINANCE BE RECORDED AS  
PROVIDED BYLAW AND PROVIDING AN EFFECTIVE DATE.

Moved by C/Lang, seconded by C/Stroebel to dispense with full reading and three consecutive readings of Ordinance 2009-13. Motion carried 3-0-1 (C/Cardoza absent).

Moved by C/Lang, seconded by C/Stroebel to adopt Ordinance 2009-13. Motion carried by the following Roll Call vote:

AYES: Lang, Bachman, Stroebel  
NOES: None  
ABSENT: Cardoza

**10. MAYOR /COUNCIL DISCUSSION:**

C/Bachman confirmed with CA/Grove that the license for Mr. Hansen for Cowgirls would expire on May 1, 2009 and asked what Council would be required to do. She wondered if the applicant was well aware of the expiration situation.

CA/Grove confirmed the expiration date and stated that Mr. Hansen is entitled to a notice of hearing.

**11. ANNOUNCEMENTS:**

M/Dowdy complimented Troy Behunin, Maranda Obray and Mike Borzick for the quality work they did on the Conceptual Plan for the potential 107 acre park

P/Troy Behunin presented the Park Concept Plan developed with the assistance of Maranda Obray and Mike Borzick. He asked Council for direction for the future of the plan and gave a description of the goals of activities for the park and the various people involved with input on the Plan. The project appears to be unable to start until 2013. He reviewed the potential phases and amenities. In response to a question about the cost, PT/Behunin indicated they didn't have a price tag as of yet.

C/Lang suggested a Town Hall Meeting be held to discuss the park plans.

Council agreed on Monday, June 1<sup>st</sup> at 6 p.m. to present the plan to the public and discuss options.

P & Z D/Hasson discussed revenue streams for the project and agreed to get an estimate of costs.

J.W. Truell and Wyatt Truell, students at Kuna High School spoke in support of the Waters Edge Development.

Danelle Huggins, a teacher at Kuna High School expressed interest in the development of the proposed park and also spoke in support of Waters' Edge because of its earth-friendly concept.

**RECESS:** M/Dowdy recessed the meeting at 8:20 p.m.

**RECONVENE:** M/Dowdy reconvened the meeting at 8:30 p.m.

**12. EXECUTIVE SESSION:**

Moved by C/Lang, seconded by C/Stroebel to adjourn to Executive Session at 8:30 p.m. pursuant to Idaho Code Section IC67-2345(c) and (f) regarding potential litigation and property acquisition. Motion carried by the following Roll Call vote:

AYES: Lang, Bachman, Stroebel  
NOES: None  
ABSENT: Cardoza

Adjourned Executive Session at 9:30 p.m.

**13. ADJOURNMENT:** There being no further business to discuss, it was moved by C/Lang, seconded by C/Stroebel to adjourn the meeting at 9:30 p.m.

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J. SCOTT DOWDY, MAYOR

ATTEST:

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LYNDA BURGESS, CITY CLERK

DATE APPROVED: MAY 5, 2009