

**KUNA CITY COUNCIL MEETING  
MINUTES  
MAY 5, 2009  
KUNA CITY HALL COUNCIL CHAMBER, 763 W. AVALON**

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

**PRESENT:** Mayor Dowdy, Council President Lang and Council Members Bachman, Cardoza and Stroebel.

**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 and Planner Tech Tracy Rushlow.

**2. INVOCATION:** None given.

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

**AMEND AGENDA: REMOVE CONSENT AGENDA ITEM D 1 AND 2 AND PLACE UNDER OLD BUSINESS AS ITEM 6.B.**

Moved by C/Lang, seconded by C/Stroebel to amend and move Public Hearing above New Business. Motion carried 4-0.

**4. CONSENT AGENDA:**

Moved by C/Lang, seconded by C/Bachman to approve the Consent Agenda. Motion carried 4-0.

A. APPROVED MINUTES OF REGULAR MEETING OF APRIL 21, 2009

B. APPROVED ACCOUNTS PAYABLE DATED APRIL 30, 2009 IN THE AMOUNT OF \$279,572.52.

C. APPROVED BUSINESS LICENSE FOR ROBERT TERRELL, "BLACK AND WHITE TAXI," 278 W. QUAKING ASPEN LN.

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

PRESENTATION BY GLORIA CHIGBROW, VALLEY REGIONAL TRANSIT REGARDING THE JOB ACCESS TRANSPORTATION PROJECT. – not present.

**6. NEW BUSINESS:**

A. CONSIDER REQUEST BY MITCHELL W. BRIGGS FOR A NON-COMMERCIAL KENNEL LICENSE, 1582 W. TOPANGA CT.

Mitchell Briggs, 1582 W. Topanga Ct., applicant, owns 5 dogs, 3 are small and kept inside and 2 remain outside. He was told that a non-commercial kennel license was required for more than 2 dogs.

C/Bachman stated that the City received letters in opposition and a couple of complaints about the dogs barking. She asked the applicant if he'd received copies. He indicated that he had not.

Mitchell Briggs – The dogs bark occasionally but not constantly. He stated one of the complainant's lived 2 blocks away. In response to C/Stroebe's question, he has had the two outside dogs for 5 and 9 years. Two dogs will be leaving the premises soon.

C/Cardoza – Are you exceeding the covenants of the Homeowners Assn?

Mitchell Briggs responded that he is not.

Moved by C/Bachman, seconded by C/Stroebe to approve the non-commercial kennel license at 1582 W Topanga Ct. Motion carried 4-0.

**B. SAILOR SHORES MEADOWS SUBDIVISION - 09-04 TE (PRELIMINARY PLAT TIME EXTENSION)**

Alex McDonald, 921 Rush Ln., Eagle, applicant, confirmed that runoff water has been a problem since the beginning. They have been working with the Department of Water Resources, Boise Project and area homeowners to make sure it's rectified correctly. They are in litigation now to make sure it gets finished.

C/Stroebe recused herself from discussion of this matter because her property abuts the subdivision's property.

Moved by C/Lang, seconded by C/Bachman to approve the time extension for Sailor Shores Meadows Subdivision to June 10, 2010. Motion carried 3-0-1.

**7. OLD BUSINESS:**

CE/Law explained that the purpose for the Resolutions was because there was an additional request related to trying to obtain a contractor to finish up the work that the first contractor failed to complete. The request is that we have an expedited means to process agreements and contracts. There are 3 options for Council to consider at the bottom of the memorandum.

In response to C/Cardoza's questions about the insurance company's helpfulness and using a local contractor, CE/Law indicated they have waived some of the time restrictions in order to declare default on this. In addition, CE/Law indicated that there wasn't a specific focus on local contractors but the size of the job wouldn't merit long distance travel.

C/Bachman stated that she found option 2 acceptable.

- A.1 ADOPTED RESOLUTION NO. R10-2009: THE CITY DECLARES H2 CONSTRUCTION INC IN DEFAULT ON THE INDIAN CREEK PIPELINE PROJECT IF SUBSTANTIAL WORK TOWARD COMPLETION IS NOT COMMENCED BEFORE 5:00 P.M. MAY 8, 2009 AND EXERCISE ITS RIGHTS TO MAKE CLAIM AGAINST THE PERFORMANCE BOND PROVIDED FOR SAID PROJECT.
2. ADOPTED RESOLUTION NO. R11-2009: THE CITY DECLARES H2 CONSTRUCTION INC IN DEFAULT ON THE TEN MILE UTILITIES (WATERLINE) PROJECT IF SUBSTANTIAL WORK TOWARD COMPLETION IS NOT COMMENCED BEFORE 5:00 P.M. MAY 8, 2009 AND EXERCISE ITS RIGHTS TO MAKE CLAIM AGAINST THE PERFORMANCE BOND PROVIDED FOR SAID PROJECT.

Moved by C/Lang, seconded by C/Stroebel to adopt Resolutions R10-2009 and R-11-2009 with a stipulation that the City follow proposal number 2 and polling of Council for approval to sign followed by formal approval at the next regular Council meeting. Motion carried 4-0.

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

PUBLIC HEARING – 09-01-RZ; 09-01-DA, 758 W. AVALON, CITY OF KUNA

PT/Tracy Rushlow reported that this property is across the street from the current City Hall and is owned by the City. It was zoned R-6, but for additional revenue, this could be rezoned and the Council could look into declaring the property surplus. It isn't being used at this time. The development agreement has been narrowed down to a C-1 zone which would be appropriate for that size of property.

C/Stroebel indicated there was no site map included in the packet.

PT/Rushlow responded that there wasn't one included because it is such a small piece of property and it would depend on what would go onto it.

P & Z Hasson explained that it is vacant City property and staff could develop a site map.

Moved by C/Stroebel, seconded by C/Bachman to table 09-01-RZ; 09-01-DA to May 19, 2009 and instruct staff to provide a conceptual site plan. Motion carried 4-0.

**7.B. DISCUSS LICENSE FOR SALE OF LIQUOR BY THE DRINK AND ON PREMISE BEER – COWGIRLS SALOON & TEQUILARIA, 353 AVENUE E**  
(Continued from April 21, 2009)

CA/Grove reported that, at the Council meeting on April 21, there appeared to be a discrepancy between the approved footprint on file with Alcohol Beverage Control and the footprint requested in the license application filed by Cowgirls. A motion was made

to continue the matter to this meeting. CA/Grove, M/Dowdy, C/Cardoza, Lt. Aldrich met with the Attorney General as to the State's plan for approval of the footprint and consideration of the properly licensed premises. There is a diagram stamped received February 8, 2007 by ABC showing the original footprint and is a smaller version of what Cowgirls' footprint is currently. Last summer, some remodeling occurred with a proposed footprint changed submitted to the state in June of 2008. ABC went to the site during construction and gave verbal approval to the additional area but the City is unsure of what the verbal authorization consisted of. The inspector gave verbal approval for Tannins. There is a procedure with ABC for formal approval but that wasn't done. Amy Van Tassell purchased Tannin's Wine Bar on 2/1/09 which was confirmed by reviewing the Secretary of State's website this afternoon. Cowgirls LLC is not listed as a part of AJ Van Tassell LLC. Kathy Hansen is a member of AJ Van Tassell LLC. ABC confirmed today that two separate entities cannot operate under one liquor license. ABC revoked the new footprint filed by Cowgirls late this afternoon and which was approved earlier by ABC. The State license has only been approved for 30 days. City Code requires the City license to be dependent on approval of the State license. The footprint approved by ABC in February 2007 is the only footprint currently approved.

C/Bachman asked for verification from the State as to the current status of the license for Cowgirls--has it been revoked for the new footprint? She would like a written document from ABC about the license.

CA/Grove explained that the City found out about the revocation at 6 p.m. so ABC was already closed and a copy of the documentation was unavailable.

Lt/Aldrich stated that he expansion was denied by ABC March 13, 2009. Last week the State sent out a denial for the beer and wine license for Tannin's. ABC spoke with Amy Van Tassell, who confirmed that she purchased Tannin's in February and has been operating the facility under her LLC since that time. Lt. Aldrich asked ABC to send something over to him and Mr. Hansen.

P&Z Dir/Hasson reported that there is a 2<sup>nd</sup> business engaged in liquor activity—beer and wine. He felt that an additional special use permit would be needed in addition to the special use permit already issued for Cowgirls.

C/Cardoza asked if there was a 30-day approval of the footprint for Cowgirls.

CA/Grove responded that, because of the revocation of the approved footprint, Cowgirls now has a temporary license. As of this revocation, there is no valid license for Tannin's at all. He asked Lt. Aldrich if anybody reviewed the contract between Hansen and Van Tassell.

Lt. Aldrich stated that the proper building inspection has not been approved by the State yet.

M/Dowdy added that, irrespective of the State licensing issues, Kuna Code requires the City to comply with the ABC's licensing. Mr. Hansen's request does not have the

same footprint in both applications.

Larry Hansen, 1888 E Rodeo Ln. introduced his lawyer, Brian McCall and gave a history on the footprint issue. He acknowledged the confusion and difficulty with ABC. He further stated that he entered into an agreement in February that Cowgirls provides all alcohol to the Tannin's space. Amy filed for her wine license with restaurant certification in March. He submitted his 2009 application in March. Tannin's has been licensed since 2004. In 2008, the licensed footprint was turned over to Cowgirls. Prior to issuance of the State license in 2008, Officer Harris from ABC inspected the premises and issued the license. The building permit was submitted to the City in April or May of 2008. He understood that the license had been expanded to cover the new areas. There is never any feedback from ABC until something is done wrong. The footprints submitted to both the City and State are the same. Now it's after 6 p.m. and ABC has revoked his license without any investigation. He indicated he understood the problem with Tannin's was because someone from the City thought the front door was too close to the school fence. But no one told him about it. He needs more information to work with the City. The Old Gym is not a school, there are not classes being held in that building. There are hundreds of people affected by the business, financially, personally and entertainment wise. Keeping the business closed is unconscionable.

M/Dowdy reported that he spoke to the school district yesterday and asked the Board to provide the City with written documentation of their interpretation of the Old Gym site's use as a school. If the district doesn't care about the proximity to Cowgirls, then the City won't either. The concern is that there are two footprints that don't match. The licensed City premises need to match the State's license premises. The request made to the City is not what was made to the State.

C/Bachman pointed out that Council received calls for service information from Lt. Aldrich; it looks like there are quite a few calls for service which is about double in comparison to a similar bar in Boise. Have any measures been implemented to reduce these incidents?

Mr. Hansen responded that comparisons with other bars are not really applicable and he compared to Hannah's in downtown Boise. Lt. Aldrich developed the SOP (standard operating procedure) for Cowgirls, he trained the original security and there is still 1 or 2 that attended. He has more security staff than members of the Kuna PD. He spoke with Lt. Aldrich last year and said if all the calls were going to end up on the police blotter in the Kuna Melba News, he would stop calling. He and Lt. Aldrich disagreed. He indicated he was going to hire a police officer for the bar.

C/Bachman asked if there are any other types of programs or safety measures that could be implemented.

Mr. Hansen answered that mandatory server training is required of every employee every year.

C/Cardoza stated that the footprint from ABC looks like identical to what is in the packet. Why are they different from what's being discussed today?

In response to C/Cardoza, CA/Grove explained that the new footprint includes some areas in the approval area that were Xd out.

Mr. Hansen stated that the area not exed out is the actual service area and what he understood is the licensed premises.

M/Dowdy suggested that everyone meet, including ABC, Lt. Aldrich, Mr. Hansen and his attorney to get everything settled.

Mr. Hansen indicated that that had been requested last week at the attorney generals office.

Brian Donesly, representing Larry Hansen, reported that he had never heard of ABC's decisions handled like they were today. They can't revoke a license simply because ABC says so. There are legal processes required before licenses can be revoked. The harm to his client will be immediate, irreparable and severe penalties to Hansen if the City license is not approved.

Lt. Aldrich agreed with everything Mr. Hansen's attorney said. Regarding calls for service compared to other Kuna bars, Cowgirls had 46 calls with the average response time of 3 minutes, 44 seconds; the average time on call with two officers was 42 minutes, 40 seconds. Then Cowgirls doesn't want to press charges. Other Kuna bars calls were 3 at the Redeye, 8 at 4E's, 13 at Longhorn and 21 at Creekside. Mr. Hansen said they weren't fair comparisons so Lt. Aldrich compared Cowgirls with other bars in Meridian and Boise. Cowgirls is double of other locations. Lt. Aldrich was concerned at the seriousness of the crimes, some of which were on Cowgirls staff.

C/Bachman expressed concern about staff committing crimes and if there could be training in place to reduce or limit it, that would be beneficial. She does receive calls from Cowgirls neighbors about trash and noise.

Lt. Aldrich emphasized that over service has been a key issue discussed with Mr. Hansen and they are trying to curb that. Training is a huge step with conflict resolution. In response to C/Bachman, Lt. Aldrich stated that a lot of the suggestions made by the police to Mr. Hansen have not been adopted. Drinking games specifically designed to be served to someone who can't handle more alcohol are a concern.

Larry Hansen pointed out that the 46 calls for service also include calls for underage, who aren't just turned away. Cowgirls confiscates the licenses and sometimes turn the offender over to Lt. Aldrich. He disagreed with some of Lt. Aldrich's suggestions but not many of them. He gave an example of one of the charges against his staff. He indicated he has a recording from customers that have been contacted by individuals from the City and encouraged to file complaints. He is in the process of adding security cameras and to the exterior of the building.

C/Stroebel recused herself from participating in voting on this matter as she and her husband have a contract with Cowgirls.

C/Bachman stated that CA/Grove asked that Council state for the record if they have had any contact with the applicant in this matter from the time the matter was tabled and now. She confirmed that she had not had any contact with anyone other than staff and the emails that everyone saw.

C/Lang confirmed that he had not had contact with anyone other than emails that everyone saw.

C/Cardoza revealed that he had contact with Mr. Hansen on Sunday but there was no discussion of the license pertaining to Cowgirls. He asked if Tannin's is part of the footprint.

CA/Grove explained that the significant difference between the City's licensing authority and the City's land use authority is the proposed area to be removed from the license. The application from March 26, 2009 is being withdrawn in favor of the current one.

M/Dowdy reported that the Special Use Permit was reviewed by the P&Z Commission and the license was reviewed by Council.

C/Cardoza, citing City Code 3-1-14 Suspension or Revocation of License, stated that he was frustrated by the State's lack of coordination and lackadaisical attitude on these matters. He thought Council should issue the license and then consider revocation if the State revokes.

Moved by C/Cardoza, seconded by C/Bachman to approve the liquor license for Cowgirls for the coming year contingent on the actions of the State; if they should pull the license with due process that the City also give due process to Cowgirls LLC.

M/Dowdy suggested the before voting on the motion, Council may want to consider whether to make the City's license contingent on the State's. He suggested if Council is going to grant the license, it is granted. The ordinance would take effect if the State revoked the license.

C/Cardoza withdrew his motion.

Moved by C/Cardoza, seconded by C/Bachman to approve the license for Cowgirls LLC with the schematic with the X's on it approved by the State of Idaho ABC. Motion carried 2-1-1 (C/Lang voted no, C/Stroebel abstained).

RECESS: M/Dowdy recessed the meeting at 9:00 p.m.

RECOVENE: M/Dowdy reconvened the meeting at 9:06 p.m.

**9. ORDINANCES:**

**10. MAYOR /COUNCIL DISCUSSION:**

**11. ANNOUNCEMENTS:**

CA/Grove reported that escrow on the property to be purchased on Lake Hazel has not yet closed because an updated title policy has not yet been received.

CE/Law reported that the State is going through the process of adjudicating all of the water rights and Kuna has rights included in the adjudication. He has been receiving reports from the court about recent actions concerning some of the City's rights which have revealed significant errors on the City's records. He recommended that the City hire an attorney to appear in court to correct those issues.

**12. EXECUTIVE SESSION:**

Moved by C/Lang seconded by C/Stroebel to adjourn to Executive Session pursuant to IC Section 67.2345(f) Motion carried by the following Roll Call vote:

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

Adjourned Executive Session at 9:30 p.m.

CA/Grove stated that stimulus money may potentially be available for the Boys & Girls Club but still waiting on the deed to the property.

Brenda Blitman explained that the Steering Committee is trying to put together a meeting and announced that Mr. Mellin has been instructed by his attorney to proceed.

**13. ADJOURNMENT:** There being no further business to discuss, it was moved by C/Stroebel, seconded by /C//Lang to adjourn at 9:34 p.m. Motion carried 4-0.

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J. SCOTT DOWDY, MAYOR

ATTEST:

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LYNDA BURGESS, CITY CLERK

DATE APPROVED: MAY 19, 2009