

**City of Rigby
City Council Meeting
November 4, 2009
7:00 p.m.**

Mayor Smith welcomed everyone to the meeting and turned the time over to Scout Dakota Moser who invited everyone to join in the pledge of allegiance. Mayor Smith then turned the time over to Councilwomen Poole who gave the prayer.

Dave Swager, City Clerk/Treasurer, performed roll call. Those present were: Mayor Smith, Councilman Marriott, Councilman Simonson, Councilwoman Poole, Councilman Day, Councilman Blackburn and Councilman Maloney.

Canvass of Votes-

Mayor Smith stated the next item on the agenda was the canvass of votes. City clerk presented the council for their review the certificate of election and poll books. The result of the election are attached to these minutes. Motion to approve election by Councilman Day, seconded by Simonson. Motion passed.

Update on Sewer/Water Studies-

Mayor Smith stated the next item on the agenda was an update on the water and sewer studies and turned the time over to a representative for their presentation.

Mike Jaglowski of Keller Associates, City Engineer, asked if they were surface water rights that could be transferred into ground water rights and how much could be used in the umbrella or be added to the umbrella. Mr. Jaglowski stated when the Hailey Creek development was started the well out there was intended to be added to the city system. Mr. Jaglowski stated the part of that which still needed to be done was having the water rights associated with that well. Mr. Jaglowski explained there were steps to this process which includes looking at these new surface water rights, the surface water rights the development has on it, converting the surface water to ground water rights and then placing them all under the umbrella. Councilman Day stated it was his understanding the city had purchased some water rights from the Rigby Canal about a year or two ago and stated those were to be transferred into ground water rights so the well could be up and running. Mr. Jaglowski stated that he was not aware of this and would look into it. Mr. Jaglowski explained that surface water rights did not do well for the city because they needed the ground water rights. Councilman Day stated that whenever a piece of property or subdivision is annexed in they are required to relinquish the associated water rights and when this well came up they were assured there would be no problem and now they are being told there is a roadblock. Councilman Simonson stated he remembered that meeting and explained that Mr. Lloyd Hicks had been present and he said there would not be a problem transferring the surface water rights to ground water rights. Councilman Simonson expressed his concern over this being a legal question and the possibility of having the city attorney look into what could be done to get the surface water turned into ground water or if it is even possible and if not what needs to be done. Mr. Jaglowski stated he wanted to address Councilman Day's question first regarding the transfer being a challenge and

explained that they are currently unaware whether this is a challenge or not at this point. Mr. Jaglowski also stated they were absolutely right as to when a property is annexed in it does relinquish their water rights and explained those are surface water rights. Mr. Jaglowski stated it was also his understanding the water rights purchased from the Rigby Canal were also surface water rights. Mr. Jaglowski explained that one of their tasks from the last meeting was to try and understand exactly what those surface water rights are, what they mean and how they could be transferred to ground water rights. Mr. Jaglowski stated if there was going to be a hitch then that would be another reporting and if there is no hitch then it would be more of a procedure to have it done. Mr. Jaglowski stated that he felt it would be a combination of the two options. Mr. Jaglowski stated that he did not believe this to be an overnight process or a mere phone call and wanted the council to be aware of that. Councilman Marriott suggested that Mayor Smith contact Lloyd Hicks and get his input on this. Councilman Blackburn stated that assuming all of this was worked out quickly and the city does have the capacity to turn the well on and asked if it was that simple and would this be available 24/7 and Mr. Jaglowski stated that according to their understanding that was correct. Mr. Jaglowski stated all the equipment and set up had been intended for a municipal purpose according to the information they have been given. Mr. Jaglowski stated they had talked with Thompson Engineering and they had indicated they were going to perform some test pumping in the near future and they wanted to be present and also have the ability to coordinate with city staff to make sure Mike McCowin, Building Official/Public Works Director, and Jim Andersen, Water Supervisor, could be present as well.

Mike Jaglowski went on to give an update on the sewer study. Mr. Jaglowski referred to the 2009 Sewer Master Plan and explained it was something they were under contract to complete. Mr. Jaglowski explained this plan was designed to take the existing facility planning study they had, map out the different sewer lines that needed to be replaced and then start looking for available funds. Mr. Jaglowski stated that around May or June of this year Mike McCowin, Building Official/Public Works Director, informed him there may not be budget to do anything on the lines identified and so let's stop. Mr. Jaglowski explained the planning process was stopped at that time and explained this also stopped four of the sewer lines that were under design. Mr. Jaglowski stated there had been a question previously from Councilman Day about what happened to the information and Mr. Jaglowski explained the information was kept on ice basically until it was needed again. Mr. Jaglowski stated there were two projects that came from this study and they were the manhole rehabilitation and Claremore Drive and Highway 48. Mr. Jaglowski stated those had been completed to the way they had been designed; they were invoiced and now closed out. Mr. Dunn stated that one thing the council wanted to know this evening was how many projects Keller Associates still have outstanding because of the budget shortfall this year. Mr. Jaglowski stated he had been given a list of nine (9) different projects from Dave Swager, City Clerk/Treasurer, and explained that of those there is only one that is still open. Mr. Jaglowski explained that one is the drinking water facilities grant. Mr. Jaglowski stated that all others had either been closed or Mr. McCowin had stated to stop work due to lack of budget. Mr. Jaglowski explained that one item of concern was the Highway 48 Corridor Study that stated December 12, 2005 and explained this was an LTHAC project. Mr. Jaglowski went over each of the nine items on the paper and gave a brief explanation of each one. Mr. Swager interjected and stated he had received notice from the state regarding federal stimulus money on the drinking water application was due on February 17th and asked for clarification on the water study grant not being completed until May and therefore missing the deadline. Mr. Jaglowski stated that when the stimulus money was being put together they had met with the Mayor Brown, Mr. McCowin and the former city clerk

at that time regarding putting in a couple of projects for this money and if they rank well then they can be developed in a way for completion by February. Mr. Jaglowski stated that unfortunately the city did not rank high enough. Mr. Jaglowski stated the grant money they were looking for from Department of Environmental Quality (DEQ) was for planning studies and was from a different source than the federal stimulus money which is for construction projects. Mr. Mullen interjected and stated there was another application in another month for the following year and felt the city was in a better position to capture additional stimulus money. Mr. Jaglowski explained they were seeking regulatory buy-in when they had Willie Teuscher of DEQ at the last meeting. Councilman Simonson referred to all projects being done but the water study and stated they had paid three-quarters ($\frac{3}{4}$) of it and asked if there was only the one-quarter or \$25,000 left owing and Mr. Jaglowski stated that was correct. Councilman Day stated he believed the city portion to be \$3,750 and asked if that was correct and Mr. Swager stated that was correct and explained they had received a \$21,000 check from DEQ for this study.

Recreation Equipment Lease-

Mayor Smith stated the next item on the agenda was regarding the recreation center and turned the time over to Craig Kawamura for his presentation.

Craig Kawamura of Idaho Sports Academy distributed copies of a proposal to the council for their review as he gave his presentation. Mr. Kawamura stated his proposal was very simple. Councilman Marriott referred to Robin Dunn, City Attorney, regarding item 4, page 2 where it says the city must provide Idaho Sports Academy with a copy of the database of previous members and asked if this infringed on any privacy laws. Mr. Dunn stated he wasn't sure what was on the application so he could not answer that question. Councilman Marriott stated if he received a phone call asking for him to join this and he asked where they obtained the information was that a concern and Mr. Dunn stated not so much with that but depending on what was asked and contained on the application it might because certain information is protected. Mr. Dunn explained that member lists can be sold and that's not necessarily a good thing but then some people might want to take advantage of the service. Mr. Kawamura stated he believed what they were referring to was HIPPA compliance and explained as long as there were no social security numbers it would be acceptable. Mr. Kawamura stated he was merely interested in having the addresses so that he could mail out fliers. Councilman Blackburn stated that Mr. Kawamura had previously mentioned not being able to take all of the equipment and referred to the proposal and asked if this meant he was taking all of the equipment now. Mr. Kawamura explained there were some items that were duplicated at the recreation center like the flat bench presses and stated he didn't think he would need both of them and also stated there would be a change in the cost if he would take more. Mr. Kawamura stated he had been unable to check his space to see if all the equipment would even fit in the proposed area but would be taking measurements and proposing layouts. Mr. Kawamura stated he knew that the police department would like to be able to utilize some of the equipment as well. Councilman Day referred to the proposal and stated that he noticed the numbers used were as if this equipment were to go to auction rather than market value and asked for an explanation. Mr. Kawamura explained he needed to start somewhere and also talked about the interest and how that was being paid according to a lease agreement. Mr. Kawamura explained the second proposal was a rental agreement where the city retains ownership. Councilman Day stated there was a quote from Gym Outfitters where they agree to pay \$16,838.00 for their equipment. Mr. Kawamura stated this was also the at auction price but with no interest. Mayor Smith stated this meant they would pay \$8,400.00 and Mr. Dunn stated Mr. Kawamura was offering \$6,000.00 over

a period of time with a \$1 buy out. Mr. Kawamura explained the difference between the two proposals with one being to rent and the other is to lease the equipment. Councilman Marriott asked if this was to go to auction would the items really only go for about 50% of their actual value and Mr. Kawamura stated generally but sometimes the actual result from an auction is less. Mr. Kawamura explained that some of the equipment has a good deal of wear and tear on them. Mike McCowin, Building Official/Public Works Director, interjected and stated Jefferson School District also had some equipment stored at the recreation center and wanted to make sure none of that was being considered in the discussion this evening. Mr. Swager stated that equipment had been taken out of this proposal. Councilman Blackburn referred to past meetings where the incentive for the city to consider entering into an agreement and asked for an explanation on the benefit for the city. Mr. Kawamura gave a brief explanation on the lease process and the company that helped him come up with the rates as shown on the proposals. Councilman Blackburn asked if the 0.02 was monthly and Mr. Kawamura explained that it was based on the amount and went over how the payments would work based on how many months the lease would cover. Mr. Kawamura stated he was also giving the city residents the benefit of \$20 per month and explained this allowed use of all services and not just the equipment. Councilman Blackburn asked if that was the standard rate and Mr. Kawamura stated that was for city residents and stated that non-city residents would be paying \$30 per month. Councilman Blackburn asked Mr. Kawamura how he would feel about guaranteeing the \$20 per month fee to city residents throughout the course of the lease period and Mr. Kawamura stated he had no problem with that and was even willing to have it written in as part of the agreement itself. Councilman Simonson asked if this lease option allowed the city to not be obligated to the bid requirement and Mr. Dunn stated that was correct. Councilman Simonson stated that if they were to sell it then it would have to go to bid and Mr. Dunn stated that was correct. Councilman Day stated that he didn't believe the city should agree to go with the auction value because he felt there was room for negotiation between that and market value. Councilman Day felt the equipment was in good condition and felt it was worth more money. Mayor Smith stated that if the equipment stayed at the recreation center and the police were to use it they would also consider opening it up for city employees. Mr. Kawamura stated he was willing to work out another price if that's what the city wanted but also asked for consideration of the city taxpayers who purchased the equipment and not only allow city employees to use it. There was a brief discussion regarding the original intent of the equipment. There was a minimum bid requirement and open all the equipment for sale but guarantees the cost to be covered. Mayor Smith asked Mr. Kawamura if the city was to pursue what Mr. Dunn had just suggested would he be willing to buy the equipment outright and Mr. Kawamura stated probably not. There was a brief discussion on other options and possible areas of negotiation. Mr. Kawamura stated it was his understanding that only ten percent (10%) of the city was involved at the recreation center and feels that he can definitely get more than that with the options they have available. Mr. Kawamura stated it was his belief that the recreation center was not properly marketed and feels that was part of the detriment to the facility. Mayor Smith suggested having himself meet with Councilman Day and try to work out a negotiation and bring it back to the council in two weeks and asked if that would be acceptable to Mr. Kawamura and he stated that would be fine. They agreed to meet at 11:00 on Monday morning in Mayor Smith's office to discuss the issue.

Interfund Transfers-Year End Close-From General Fund to Road Fund-

Mayor Smith stated the next item on the agenda was an interfund transfer and turned the time over to Dave Swager for his presentation. City clerk explained the road fund revenues totaling \$238,567 and expenditures totaling \$341,692 for a net expense exceeding revenues of \$103,125. The

budget had called for a transfer from general fund of \$306,082. Given the reduction in general fund \$83,659 was booked as an interfund transfer from general which will bring the road fund to a zero fund balance. City clerk requested approval from the council for the cash transfer. Motion by Councilman Maloney to approve, seconded by Councilman Day. Motion passed.

Other Council Business-

Mayor Smith stated the next item on the agenda was other council business and turned the time over to the council for any item they wanted to discuss or disclose.

Mayor Smith stated he did have a proclamation that he would like to read into record. Mayor Smith read the proclamation into record as follows:

Mayoral Proclamation-Rigby

United Way Week, November 9-15, 2009

WHEREAS, the United Way of Idaho Falls & Bonneville, Fremont, Jefferson, Madison & Teton counties (hereinafter United Way) devotes its time and resources to improving the quality of life of residents throughout a five-county region that includes Rigby; and

WHEREAS, United Way will distribute more than \$1.5 million this year in funding, supplies and equipment to 32 local social service agencies, other nonprofits and schools to help those in need; and

WHEREAS, United Way contributions fund affordable daycare, emergency shelter, counseling, food assistance, tutoring, children's sports programs, scouting, mentoring, housing and job assistance, alcohol and drug rehabilitation, domestic violence intervention, hospice care, mental health and legal services; and

WHEREAS, United Way is so effectively managed that it returns more than \$1.50 to our region for each dollar it receives;

WHEREAS, United Way is now conducting its annual fundraising campaign, and
"Together We Make A Difference"

NOW THEREFORE be it resolved, that I, Mayor Keith Smith do hereby proclaim Nov. 9-15 as "United Way Week" in Rigby and encourage all residents, businesses and institutions to support this outstanding organization and its fundraising effort.

Mayor Smith asked for any other council business. No further council business was stated.

Mayor Smith stated there was a need for an executive session and they would move to that after the approval of bills and minutes.

Approval of Bills-

Mayor Smith stated the next item on the agenda was the approval of bills and asked if there were any questions or comments.

Councilman Marriott asked Rick Lamoreaux, Park/Street/Sanitation Supervisor, when he would be removing the temporary toilets from the city parks and Mr. Lamoreaux stated that had already been done as of October 23rd. Councilman Marriott stated there was some videoing of the main line and asked if Keller Associates did that and Mike McCowin, Building Official/Public Works Director,

stated they did not. Councilman Blackburn moved to approve payment of the bills. Councilman Maloney seconded. All were in favor.

Approval of Minutes-

Mayor Smith stated the next item on the agenda was the approval of minutes and asked if there were any questions, corrections or comments.

Councilman Day stated that one page on the names for the pledge and prayer were wrong and asked Councilman Marriott if he had that information. Councilman Marriott stated that Kenneth Jensen led them in the pledge and that he had given the prayer. Councilman Marriott asked Mayor Brown when he looked at Elite if everything was ok over there and Mayor Smith stated the lights were still not working. Councilman Simonson moved to approve the minutes as corrected. Councilwoman Poole seconded. All were in favor.

Public Comment-

Mayor Smith stated the next item on the agenda was public comment and turned the time over to the audience.

There was no public comment given.

Councilman Marriott stated they should congratulate the new city council members coming before too long and Mayor Smith agreed.

Executive Session Pursuant to Idaho Code 67-2345 subsection F-

Mayor Smith stated the next item was not on the agenda but was necessary and asked for a motion to go to executive session.

Councilman Blackburn moved to enter into executive session pursuant to Idaho Code 67-2345 subsection F for possible litigation. Councilman Maloney seconded. All were in favor. Regular council meeting recessed and executive session began.

Executive session ended and regular council meeting was reconvened at 9:20PM

Robin Dunn, City Attorney, stated that he receives emails from the Mayor directing him on things and then receives draft emails from Peck Ormsby on what they would like to see happen and so he was looking for direction. Mr. Dunn stated when a meeting was arranged with the person in charge the city needed to make sure they went through everything and addressed each item on the punch-list and everyone initial their understanding. Councilman Simonson referred to this meeting and stated their engineer, the city engineer, the Mayor and Mr. Dunn would need to be present but asked if someone of authority regarding the filters needed to be there as well. Mr. Dunn stated he felt that was an issue for Peck Ormsby and Mayor Smith agreed. Jim Mullen of Keller Associates, City Engineer, stated they have received emails and given updates and they even had a conference call with the filter company regarding the progress. Mayor Smith stated he felt they were working in good faith but expressed a concern on protecting the city. Mayor Smith stated they had held discussions and now he and Mr. Dunn were looking for some direction from the council in the form of a motion. Councilman Simonson moved to send a letter or contact Mr. Peck who is the owner or manager over the treatment system contractor, to meet within five (5) to seven (7) days

with our attorney, the Mayor, our engineer and city engineer to discuss the problems and put together a list and seek resolution through negotiations to find out what can be done at this time. Mayor Smith asked if he was being given authority to make decisions at that meeting or would it need to come back to the council. Councilman Simonson stated that with all the people going to be present at the meeting he felt the authority could be the Mayor's to make decisions. Councilman Simonson added to his motion that if they don't agree to meet with us in the specified amount of time without good reason then we send a letter from the city attorney saying we're going to contact the bonding agent because we want this project finished. Councilman Blackburn asked for clarification on the time frame and attorney involvement and it was agreed that if they didn't meet then they authorized the attorney to seek liquidated damages or appropriate costs. Councilman Marriott seconded. Councilman Marriott stated he would like to give the Mayor the authority to add other people to this meeting like Ted Hendricks or whomever he deemed appropriate. Mayor Smith stated it was his understanding that if a decision was reached then he had the authority to proceed and Councilman Simonson stated that was correct. Councilman Blackburn explained he was a little hesitant because he would like to have information brought back to the council to discuss but agreed that Mayor Smith believed in having this done right and was very passionate about protecting the taxpayers and conceded to allow the authority to the Mayor. Mr. Mullen stated he wanted the council to know they felt equally as strong as the Mayor and felt there were ways to get where they needed to be. Mr. Mullen stated he wasn't sure if the city wanted to contact them or have Keller Associates contact them and also asked whether to them let them know the items that were going to be negotiated and discussed or just invite them to a meeting. Mr. Dunn stated he would like to just invite them to a meeting and suggested holding it in his office in one of the conference rooms. All were in favor.

Mayor Smith asked Mr. Dunn if it was better for his office or the city engineer to contact the contractor and set up this meeting. Mr. Dunn stated he felt the engineer would have more information available at this time. Mayor Smith directed Jim Mullen of Keller Associates, City Engineer, to contact Peck Orsmy and arrange a meeting. Mr. Mullen asked if there could be a pre-meeting with the city prior to this scheduled meeting and Mr. Dunn and Mayor Smith indicated that would be appropriate. Mr. Dunn asked Mr. Mullen to contact him tomorrow afternoon and get this arrangement started.

Councilman Simonson moved to adjourn the meeting. Councilman Maloney seconded. All were in favor. The meeting was adjourned at 9:49 p.m.


Keith Smith, Mayor


attest: David Swager, City Clerk