

City of Rigby  
Council Meeting Minutes  
January 7, 2014

Mayor Smith called the meeting to order at 7:00 pm Tuesday, January 7, 2014. The pledge of allegiance was given by Larry Anderson and Bo Smith offered the prayer.

Mayor Smith asked the clerk to call the roll.

Councilwoman Hinckley	Present
Councilman Maloney	Present
Councilman Zimmermann	Present
Councilman Olsen	Present
Councilman Simonson	Present
Councilman Sullenger	Present

Also present: Chief Hammon and Attorney Robin Dunn

**Peck Ormsby Law Suit:**

Lee Radford, attorney from Moffat Thomas, outlined to the council the problems encountered with the treatment plant filtration system. He explained the filtration system was installed to remove 5 parts per million of particulates per DEQ specifications. When the system was bid, USDA, who was a lender on the project, required a minimum of two competitive bids. After an exhaustive search, the engineer found a second company out of Florida, Parkson. Their bid was just under the preferred vendor, Aqua-Robotics, and was selected as being a competitive and responsive bid. As events transpired, the Parkson system was not achieving nor were the filters removing the minimum particulates' as required by DEQ. After several attempts and trial runs, the city concluded that the filtration system would never be able to achieve the DEQ standards. The city held back the retainage being held to Peck-Ormsby and in 2010 Peck-Ormsby filed suit in federal court against the city seeking 100% of the retention and Peck-Ormsby also filed suit against Parkson for failure of the filtration system.

Parkson did provide the city with a guarantee that the system would meet the DEQ standards. But the guarantee limited Parkson's liability to 25% of the cost and required arbitration be held in Florida. The 25% of cost amounted to \$75,000. The city argued in district court on three separate motions that the limitation clause contained in the guarantee was not a guarantee of substance and the judge agreed with the city. Parkson appealed the decision to the 9<sup>th</sup> Circuit Court of Appeal and the 9<sup>th</sup> Circuit reversed the district court judge. For the city to win a decision against Parkson the city would be limited to damages not to exceed \$75,000.

During the legal process to determine what damages the city suffered due to the failure of the Parkson filter system an estimate was given from \$50,000 to \$147,000 up to \$400,000. During mediation it was decided that the city could retain \$147,000 of the retainage and pay Peck Ormsby the balance owed of \$220,000.

Mr. Radford felt the decision made in the mediation was justified and he supported the decision not to pursue further legal proceedings.

Concluding Mr. Radford's remarks, the Mayor asked if there were any questions from the council.

Councilman Olsen asked what the balance was in the retention account. Mr. Radford responded that the account had approx \$368,000, the city would retain approx \$150,000 and Peck Ormsby would be paid \$220,000 of the \$368,000.

Councilman Simonson asked if the Parkson filter was the first and last filter system in the nation. Mr. Radford agreed that to his knowledge Parkson was no longer in the wastewater filtration business. He went on to add, that there was another company, Entech, who made an offer that the system could be repaired for around \$60,000 but would not guarantee the system.

**Review and Approval of Bills:**

The council reviewed the bills and Councilman Zimmermann asked about the invoice to Meuleman Molleerup for \$221,112.91. The clerk indicated that his notes from the mediation had that being the amount due them, but the settlement papers showed \$220,313 so the difference \$800 would be kept back.

Having no other questions, Councilwoman Hinckley moved to approve the bills seconded by Councilman Maloney.

Mayor Smith asked the clerk to poll the council.

Councilwoman Hinckley	Yes
Councilman Maloney	Yes
Councilman Zimmermann	Yes
Councilman Olsen	Yes
Councilman Simonson	Yes
Councilman Sullenger	Yes

**Approval of Minutes:**

Councilman Zimmermann noted one error that needed to be corrected.

Councilman Maloney moved to approve the minutes seconded by Councilman Zimmermann.

The Mayor asked for a voice poll: All in favor none opposed.

Prior to the Mayor's comments Council President Maloney presented Mayor Smith with an plaque and gavel with engraving thanking him for his years of service as councilman and mayor. Chief Hammon also presented outgoing Councilwoman Hinckley and Councilman Zimmermann with a challenge coin. He then presented the mayor with a book containing pictures and letters from colleagues and staff.

**Mayor's Comments:**

Mayor Smith summarized his years of service to the city beginning with his election in 2005 to the city council. Then after his appointment in April 2009 his election in November 2009 to the position of mayor. He commented on the work began in 2006 on the wastewater treatment plant and the completion of the suit this past month with the general contractor. He noted the original debt had interest being paid at 3.25%. And after discussion with DEQ they dropped the interest rate to zero which he estimated would save the city over \$4 million in interest payments. He also thanked the Urban Renewal for the work they did on the downtown lighting project. He felt the city is in much better shape financially than it was four years earlier. The city has initiated a financial goal of retaining 90 days working capital for each fund and the city has achieved that goal.

He also gave advise to the incoming mayor and council: The city has quality people working for it. This includes the council, department heads and other employees.

He thanked the volunteer boards: Urban Renewal, airport, library, park and rodeo, and the city staff itself. He also wanted to thank the community for supporting him in both elections. He wanted thank his family for their support. And lastly, he wanted to thank his dad, Doyle, who had served on the council from 1970 to 1978. He noted that he had put forth a lot of questions to his dad, but his dad answered them with a question back to him. He noted Doyle was a great listener.

**Swearing In New Mayor and Council:**

The clerk came forward and administered the oath of office to Mayor-elect Jason Richardson.

Mayor Richardson then gave the oath of office to Councilmen-elect: Olsen, Taylor, Sullenger and Walker.

**Council President:**

Mayor Richardson indicted the next order of business would be the selection of council president.

Councilman Simonson moved to elect Councilman Maloney as council president seconded by Councilman Olsen.

Mayor Richardson asked the clerk to poll the council.

Councilman Walker	Yes
Councilman Maloney	Abstained
Councilman Taylor	Yes
Councilman Olsen	Yes
Councilman Simonson	Yes
Councilman Sullenger	Yes

**Non-Commercial Kennel License:**

Johnathan Romriell came forward and presented the council with a petition for a non-commercial kennel license for five dogs. The clerk indicated that the petitioner has the approval of 75% of the adjoining property owners within 100 feet of his property.

Councilman Olsen asked if the neighbors had any concerns. Mr. Romriell stated one person at first had concern but after he talked with them they were okay and signed the petition.

Councilman Taylor asked if there was any public comment. The Mayor asked if anyone wanted to make a comment. None were made.

Councilman Olsen stated that if the adjoining property owners had no objections and the petitioner met the requirements, he had no objection to the petition.

Councilman Olsen moved to approve the kennel license seconded by Councilman Simonson.

Mayor Richardson asked the clerk to poll the council.

Councilman Walker	Yes
Councilman Maloney	Yes
Councilman Taylor	Yes
Councilman Olsen	Yes
Councilman Simonson	Yes
Councilman Sullenger	Yes

**Other Council Business:**

- Mayor Richardson mentioned the AIC meeting being held January 30. He indicated he was planning on attending and encouraged others to attend.
- Openness of city meetings. Mayor Richardson noted that during the campaign the citizens wanted the council business to be more open and transparent. He would like to look into having the council meetings either live video or audio and asked the council for their thinking.

**Public Comment:**

- Harry Guelzow – Came forward and asked if the council were going to read and have access to the city code so they would know what is in the code. Mayor Richardson indicated the clerk has prepared the new members with a bound copy of the code. He also has listened to tapes prepared by AIC on the subject of city management.

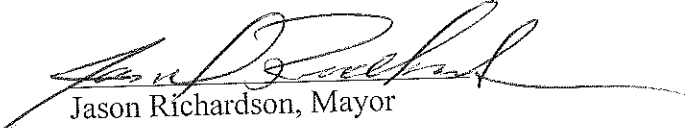
**Adjournment:**

Having no other business- Councilman Simonson moved to adjourn seconded by Councilman Maloney.

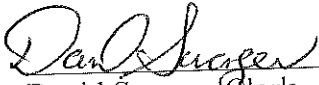
The Mayor asked for a voice poll: All in favor none opposed.

Meeting adjourned: 7:48pm

CITY OF RIGBY

  
Jason Richardson, Mayor

ATTEST:

  
David Swager, Clerk