

CITY OF GENESEE

Location: 235 W Chestnut Street, (Fire Station) Genesee, ID 83832

CITY COUNCIL

February 21, 2023

REGULAR COUNCIL MEETING

MINUTES

6:00 PM

6:00PM Hearing on Request for Reconsideration for denial of septic system at 806 Genesee Avenue-Trent Souders

Mayor Hermann read Trent Souders email from February 14th. (Jennifer Douglass asked this be read aloud for the record). "Hi John, I received your letter the city and your attorney put together and sent to me after I had expressed my concerns with the first denial letter. The main concern I had was that your decision was in direct conflict with Idaho state law. The Idaho state law I am referring to was sent to you and Dustin Brinkley. I did not hear back from the City or Dustin in regards to this State Law which states, "provided, however, that no owner shall be compelled to connect his property with such system unless a service line is brought, by the district, to a point within two hundred (200) feet of his dwelling place;(m) To adopt and amend bylaws not in conflict with the constitution and laws of the state for carrying on the business, objects and affairs of the board and of the district." All state laws in regards to septic for new construction and cottage sites reference this law. IC 42-3212 IC 39-3635 both circle back to the 200 feet from a dwelling. (not a property line).

You also stated in your letter that "At this time, City staff also contacted the Idaho Department of Environmental Quality to determine their position regarding your application. Their position was "to require property owners with property lines within 200 feet of a City sewer main to tap into the sewer system with a service line". (state law states if a dwelling is within 200 feet). I spoke with AJ Maupin, the water quality engineer manager for IDEQ in Lewiston. He stated that they do not have an official stance on this issue as they have granted the power to the Health Districts in Idaho through a memorandum, which can be found on their website.

so spoke with Ebben with Public Health North Central Idaho district who does testing and approvals for septic in Latah County. He did not have an opinion on the matter, as his stance is based solely off of his testing once he gets approval. The septic would also meet the requirements of IDAPA 58.01.03 which is required by the Health District (upon testing).

A few things I have learned over the past couple months from this issue are as follows; Idaho granted its Health Districts the power of approval on septic systems upon approval from the local jurisdiction. This approval or denial from the city that the Health District relies on to approve or deny a septic must be done in accordance with current state laws as well. **Idaho Code 42-3212 explicitly states that you can not pass conflicting regulation that opposes it.** Secondly, the city cannot tell a land owner where to place a new home. Since the desired location is over double the required distance to hook up to city services it would fall under the section referred to in IC 42-3212".

At this time I would like the City of Genesee council members to be informed of this email and current state laws regarding this matter and seek reconsideration. I would also like the reconsideration to have some mention to the multiple state laws referenced as well as section (m) of IC42-3212.

City Attorney, Jennifer Douglass, researched the codes Mr. Souders referenced. Dustin spoke with DEQ and also sent Mr. Souders a denial letter. John sent another denial letter, he and Jennifer put together. Jennifer started with the codes Mr. Souders referenced: Code 42 Chapter 32 or 3212. 42-32-02. That is a definition of a water district. A water district is something that has to be formed pursuant to the Idaho Code using their process. A water district is not the same thing as a city. A water district supplies water for domestic, commercial and/or industrial purposes by any available means and for that purpose any such district shall have power to extend its water lines to the source of the water supply. This code goes on to define a sewer district as well as the reason a district may be formed and then the word board is used in this chapter shall be the board of directors of a district. So when you form a water district you have to appoint a board, so keep in mind that is separate from a City. Code 42-32-12 describes the powers of a board. When the Idaho Legislature passed a statute governing water and sewer districts, they put certain limitations and restrictions on the boards ability to enforce certain regulations. In code 42 32 12L a provision at the end of a long paragraph, it has all the things that a board can do and in it says no owner shall be compelled to connect to the property with such system unless a service line is brought, by the district, to a point within 200' of this dwelling.

Jennifer finds nothing in the code that the City is considered a District, so Idaho Code Title 42 doesn't apply. Cody made the comment, he believes City's that are not incorporated and do not have a city government, form water districts. Idaho Code 39-36-35 health and safety section. The Code Mr. Souders references talks about how close a sewer line has to be brought to a dwelling considered a cottage site. Jennifer doesn't see how the cottage site defined, applies to this situation or the City. Idaho Code 50-323. 50-323. Domestic Water Systems: Cities are hereby empowered to establish, create, develop, maintain and operate domestic water systems; provide for domestic water from wells, streams, water sheds or any other source; provide for storage, treatment and transmission of the same to the inhabitants of the city; and to do all things necessary to protect the source of water from contamination. The term "domestic water systems" and "domestic water" includes by way of example but not by way of limitation, a public water system providing water at any temperature for space heating or cooling, culinary, sanitary, recreational or therapeutic uses. Jennifer doesn't see anywhere the City can't regulate their water and sewer systems for the health and safety of their citizens. The City of Genesee has a sewer ordinance and Jennifer could not find any code requiring the City required to bring the sewer line within 200' of a dwelling or property. Cody feels the City's code 3-3-4 states our position well. Mayor Hermann read a portion of the letter he sent Mr. Souders; "You have pointed to Section 4-2-3, which I believe is inapplicable to the situation governing your property. First, a privy or outhouse is not the subject of the application. Second, your application relates to new construction, not an occupied building with an outhouse. Finally, it is my interpretation that the code that is applicable and determinative with respect to your application, is the code that is relied upon in this letter", which is 3-3-3.

Mayor Hermann wanted to leave this for a discussion and then a decision at the next meeting, March 7th to give Council time to question Jennifer or deliberate among themselves. Mayor Hermann will allow for comments when this issue is back on the Agenda. Jennifer encourages Council not to respond to citizen comments tonight. Mayor Hermann closed this Hearing 6:30pm

CALL TO ORDER - Mayor, John Hermann, called the Regular City Council meeting to order at 6:30pm.

ROLL CALL: Council Members, Bill Krick, Nyla Roach, Jesse Aherin, Cody Bailey, Public Works Director Dustin Brinkly, City Clerk/Treasurer Debi Zenner, City Engineer Scott Becker, City Attorney, Jennifer Douglass

VISITORS: Tony Matson-Hayden & Ross, bonnie McGlothen, Matt Becker, and Mike Cameron (two other individuals that did not sign in)

CITIZEN COMMENTS: Bonnie McGlothen spoke in favor of Mr. Souders and feels if the City doesn't allow him to have a septic system, he could possibly be forced to sell his property.

CONSENT AGENDA - Motion made by Bill, seconded by Jesse, to accept the consent agenda as presented, along with payment of the bills; **ROLL CALL VOTE: Krick, Roach, Aherin, Bailey; AYES, motion carries.**

UNFINISHED BUSINESS: None

NEW BUSINESS:

ARPA Selection - Motion made by Cody, seconded by Bill to select the **Standard Allowance** for the use of the ARPA funds; **ROLL CALL VOTE: Krick, Roach, Aherin, and Bailey; AYES, motion carries**

Hayden & Ross FY22 Audit Presentation - Tony Matson discussed the FY22 Audit. The City has a Single Audit when you have federal expenditures over 750K. Fiscal year 21 had single audits; ARPA funds, DEQ, Corps of Engineers; any

major projects need single audits. We passed our procurement policy in 2022. Tony needs to make sure the City follows all rules and procurement procedures vendors require. Tony went through the handout booklets and discussed each fund and answered Council's questions. Motion made by Cody, seconded by Jesse, to approve the FY22 Audit; **ROLL CALL VOTE: Krick, Roach, Aherin, and Bailey; AYES, motion carries.**

Administrative procedures for non-zoning applications - Jennifer spoke about the procedures for this process. When you submit an application for anything within the city, this policy would let residents know what to expect. Jennifer suggested Dustin and/or a Council member(s) look into how other cities work through this. Jennifer feels Genesee's administrative procedures are missing. Jesse and the Mayor will also look into how other towns handle this. Cody mentioned Moscow's City Clerk was very helpful and she may be able to help too.

INTRODUCTION, READINGS AND ADOPTION OF ORDINANCES & RESOLUTIONS-None

CITY OFFICIAL, COUNCIL AND STAFF REPORTS

Mayor Update: Meeting with Latah solid waste. The committee has interviewed the owner and management team from Sunshine disposal. They are based out of Seattle, but they service Lewiston. The committee also interviewed Inland North waste. They gave a presentation, changing the system at a much higher rate. The committee is comprised of rural Latah and mayors from other cities and Amanda Bashaw. The committee will give a recommendation to the commissioners, hopefully by June, 2023.

Dustin gave an overview on a property the owner believed was divided, but both lots would be under the minimum bare footage. Scott is going to review and see what the owner's options are, but feels it should probably go through Planning and Zoning for their recommendation.

Sewer backup on Chestnut Street: Dustin explained the process on this so far. Dustin has contacted Debco to see what their recommendation is. ICRMP indicated the City is not liable because this happened during the LHTAC project and the asphalt was inadvertently dropped in a manhole. Dustin is assisting the homeowner with items and storing them in the old City shop. Debco asked the homeowner to contact their insurance to contact Debco's insurance. Debco, JUB and POE all knew this asphalt was in the manhole. Dustin has the asphalt in a bucket in case anyone had questions about it. Council asked Dustin to keep track of his time and hopefully that can be reimbursed.

Bill Krick – Water and Sewer Update: Has not heard from Ryan, but will talk to him before the next meeting. Had an onsite meeting at the Well site and a discussion regarding the monitor.


Cody Bailey – Street Update: No Report

Jesse Aherin – Administrative Update: No Report

Nyla Roach – Parks Update: No Report

CORRESPONDENCE: None

ADJOURNMENT: Motion made by Cody, seconded by Nyla, to adjourn at 7:49 pm; **VOICE VOTE: AYES, motion carried.**



John Hermann, Mayor



Debi Zenner, City Clerk/Treasurer