



TOWN OF ALPINE
COUNCIL MEETING
MINUTES

Minutes are a summary only of a tape recorded meeting

DATE: June 25, 2009
TIME: 6:30 p.m.

PLACE: Town Hall
TYPE: Regular Meeting

Call to Order: Mayor Victoria DeCora called the meeting to order at 6:34 p.m.

Pledge of Allegiance: Mayor DeCora led attendees in the Pledge of Allegiance

Roll Call: Office Assistant Christine Wagner conducted roll call: Present: Mayor Victoria DeCora, Don Jorgensen, Beau Taylor, Troy Johnson and Shirley Brown. A quorum was established. Also in attendance were Town Attorney Stefan Fodor and Town Administrator Deb Wolfley.

- (a) Bid Award Town of Alpine Child Development Center – Ms. Kay Gogol spoke to the Council about the bids that were received. They did receive a bid that was under budget, it was from DeWall Construction. Ms. Gogol was happy to see the amount of bids that were turned in. She further stated that Mr. Gerry Myers, from Myers-Anderson Architects recommended that the bid be awarded to DeWall Construction. Ms. Gogol further stated that the five (5) percent preference does not apply, because it is a federal grant and that would override the state law. Councilman Johnson asked not only is the Town inspector going to be inspecting this project, but is the architect also going to be following the project?

Councilman Johnson motioned to award the bid to DeWall Construction, contingent upon the attorney's review of the contract. Councilman Taylor seconded the motion.

Vote: 5 yes, 0 no, 0 abstain, 0 absent. Motion carried.

Mayor DeCora called a recess at 6:41 pm. Mayor DeCora re-convened the meeting at 6:52 pm.

- (b) 193 – Ordinance No. 2009 - 49: An Emergency Ordinance to Repeal & Replace #185-Ordinance No. 2008-41 - Council reviewed the ordinance. Attorney Mr. Stefan Fodor stated that the emergency ordinance was passed at the last meeting and goes into effect immediately upon publication in the newspaper. It is valid for 90 days therefore that ordinance, as it reads, is in effect today. This ordinance delays the implementation date for connection from June 30 to July 31, 2009. It was agreed at the last council meeting that there were as a couple of issues that the town would like to work out. If the Council comes to some type of resolution on one or more of these issues tonight, you can pass the first reading of 194 tonight, the text and the language can be changed like any other ordinance on three readings so if you wanted to get an ordinance passed before July 31st, before all these new dates kick in you should have the 1st reading of the ordinance tonight, and the 2nd & 3rd readings before the end of July, with any changes in the text and/or language just like any of the other ordinances. Council reviewed the ordinance, Councilman Johnson commented one of the items discussed previously, was to get rid of the table on how they charge for ERUs. Mayor DeCora commented that the table is a national standard for new businesses. Councilman Taylor disagreed with that statement, “there is no national

standard". Councilman Johnson said that he feels that the table is not very effective for the Town of Alpine. Councilman Taylor said let's not throw it out there to get rid of the chart, let's put it out there as this is the way to charge people fairly and accurately, regardless of what the chart says, there are discrepancies in some businesses. Some of them work out great but others don't. We don't need to depend on the chart, when we have real data that we can use. So if we go with a deposit system, a reasonable estimate, of the connection fee and the monthly charge of their ERUs we charge according to our estimate for the first year or two and that the end of that time set those fees, at that point. If we are off and they are behind, they owe us and if we are off we owe them, he believes that is a fair way to go about it. Mayor DeCora asked what the deposit is based on. Councilman Taylor feels that we could come up with a logically good estimate, the chart has some reasonable basis, but to base restaurants on seats, such as the Coffee Cabin there is no reality to it. For example, when one place is a paper and to go place and the other is a sit down place, which uses a 10th of the water. Just like SALL Enterprises, he has been watching their water meter with them and the Town chart says they are to be charged for fifteen and the data says they are using maybe three right now. Mr. Atwood agreed with that statement. Further commenting on a yearly average they are probably using about five for all three businesses. Councilman Johnson stated we have the rebate system going, but new business after this would be based differently than what we have right now. Where they have the system now, they could sign up for four or five, and then in two years if they are not using that many or they are using six or seven, then they don't have to come up with such a large chunk of change. For instance a new business, we estimate them at two, they would give a deposit for two ERUS and after two years, if they are only using one, we would refund them for the one. Mayor DeCora asked, what if they are using three? Councilman Johnson responded if they are using three then they have to buy a third one. Councilman Taylor said the chart gives us a close enough ball park figure, it is close enough data for most business in town, and then after a year or two we can re-evaluate it. So basically you pay for what you are using based on the 250 average gallons per day instead of coming up with an arbitrary number, we charge them for what they use. Mayor DeCora asked what type of deposit? Councilman Johnson said the full capacity fee, either the \$5000 or whatever the fee is at that time, any new business would be required to connect. Mayor DeCora asked about SALL. Councilman Johnson said they would have three years to connect, but they would have to sign up under the amortization schedule. Councilman Taylor again reiterated that he feels it would be a fair way, instead of using the chart, just have a little patience and then set it where it is. If Councilman Taylor was in SALL's position, he would buy six, he feels that is what their use is, basically they could buy the ERUs right now and then pay the amortization and get a rebate, pay the readiness to serve fee and then at the end of the two years we can set their final rate. If it is above that - they would have to buy more, and if it is below that - we would have to refund them. The same with the new business that come to town. Mayor DeCora stated that she does not think that we should throw the table out. Councilman Taylor agrees that it should not be thrown out, in some instances it is valuable, but in some instances we have to look at a specific business instead of saying that restaurants are all the same, bars are all the same. Councilman Taylor further stated that he had been informed on more than one occasion, that this chart was derived by taking local numbers. Attorney Fodor commented that Sunrise Engineering did not draft the table, but there is a representative here, and asked what he thought.

Ryan Erickson (Sunrise Engineering) stated he has had a chance to review the chart and has looked at other towns and they are all different. He is not aware of a set standard. Councilman Taylor stated he has reviewed lots of towns; there is no rhyme or reason for ERU allocations that he can see. Mr. Erickson talked about comparing peak day usage, which is hard to determine, every business is different. Average usage vs. peak usage is different. Sewer is always based on peak days. Councilman Taylor has gone over the numbers, the Town of Alpine peak days are usually the 4th of July and the 24th of July. Our system had 250 users and was only using 60 thousand gallons on those peak days. On an average day each customer was only using about 220 gallons, on peak days 267 gallons and has room for 375 gallons per user, because we have so many residential

users he believes they do not get the surge. Mr. Erickson stated a peak days for the Town might not be a peak day for any one business. Councilman Taylor said that is why it is figured at 250 gallons, averaging down for those days. It all balances out for those days, it's a trade off. Mr. Erickson said look at average usage, you need to draw a line somewhere. It is a fair way to do it.

Attorney Fodor commented, he likes where Councilman Taylor is going however he suggests looking at more of a global sense, taking the subjectivity out of what the Council is doing. Your objective could be obtained by taking the table and revising some of the aspects. When maintaining the table, you have objective criteria being less subjective and more objective in creating certainty for the public today and in the future. People need to know what they are getting into. This establishes objective criteria now and in the future. Councilman Taylor stated he is not here to negotiate for anyone; he is here to do what is the best for the Town of Alpine! This is not arbitrary, this is people who have to pay what they are using; the chart has no bearing on each businesses. Based on what that business is doing, not what someone else thought up and put down on paper. It is what it is! Attorney Fodor said, it is what it is, but you are making a prospective guess as to what it will be, with no certainty. Councilman Taylor said, that is exactly what that list is, it is a prospective guess with no bearing on reality, when after two years, it is what it is. Councilman Jorgensen stated it applies to every business and every residence, it is not arbitrary. Councilman Taylor stated that if he was a new business coming to town he would be happy with a little bit of uncertainty as to what it will be, rather than being stuck with a chart that could be completely inaccurate for his situation. Attorney Fodor asked if they were going to make adjustments for residences, if they only live here part of the year will there be some type of adjustments for those residents, when they come in and say that they only use "XX" amount of gallons, because they are only seasonal residents. Both Councilman Taylor and Johnson stated one is one, residences are not in question, residents are charged for one ERU. Councilman Taylor, Johnson and Jorgensen along with Attorney Fodor discussed the fairness of charging business only one ERU. Attorney Fodor stated he is just giving you his advice, "you as a Council can make any decisions you want", but he needs to state his advice for the record and make his advice regarding subjectivity known.

Councilman Johnson agrees to a point that a chart would be less judgmental, but on actual use, he just does not know how you can pass judgment if someone comes in and wants to put in a business; I think I will only use one and we say you will use two, we will sell you the one now, but next year our ERUS go up "XX" amount of dollars, so you can pay now or later at a higher rate, that is his option. Councilman Taylor said it should be based on what they are using, because people should be able to take advantage of water saving technology and hopefully recoup for their efforts. They should have an incentive to want to save and have that ability. Attorney Fodor said if you go down that road, how you can represent someone that is not on the chart. How do you as a Council go on actual use vs. prospective use? Councilman Taylor said just as we do now, since it is not on the list we would have to do a little research; the Council would sit down and make a reasonable decision. With any business we will be able to make a reasonable estimate of what they are going to use. And in the end we would have to do the same thing, but our number would not be an arbitrary number locked in. If we go this way, it would be a number of what they use. Mayor DeCora asked when a business comes in they want two EURS at the end of that two years, we evaluate them and determine that they should have bought three, are both the user fee and the connection fee retro-active. Councilman Taylor stated "yes". Usually after a year most business will know what they are using. They will have an interest/money at stake; they will be keeping an eye on it. If they realize that they are using more than what they anticipated, they will be liable for the amount that they are using. Attorney Fodor asked about charging Northstar Utility, as of now they are based on the chart, because that is what is in the ordinance. How are you going to bill them? Councilman Johnson stated nothing will change with them, they bought so many ERUS. Councilman Taylor stated the bottom line is they will have to start checking meters. If the do not have meter, they can stick with the chart. We can give them that leverage. He believes as a council they could do that. The bottom line is the developer is never going to pay more what he is contractually obligated to pay. Attorney Fodor stated there is a

mechanism there, but how will they allocated those. Councilman Taylor, the same way we would based on actual usage, rather than the chart. We have already done that with our existing businesses. Attorney Fodor stated he gave his opinion, he feels that you might be in danger of being arbitrary. Councilman Taylor agreed to disagree, this is the non arbitrary way, they way we are doing it now is so arbitrary. It is what it is at the end of two years. Mayor DeCora asked Councilman Taylor who would determine how many ERUS you would put down as a deposit. Councilman Taylor commented that it would be the Council that makes that decision. Councilman Johnson asked if the business owner and the council should come to that agreement.

Mayor DeCora suspended the council rules to take public comments. Public comment was made by Mr. Jeff Atwood in reference to a previous statement about the minimum of one ERU might hurt a residence, but it might hurt the business too. He thinks what Councilman Taylor is saying is simple - cut and dry. A new business you want to use some type of chart, you talk with them about usage, read the meter every six months, or have the business owners do it, and they will see where they are at and know if they need more, then they will need to purchase more and they are metered for what they use. Charge for what you use, per ERU on your meter. Mayor DeCora reinstated Council rules. Councilman Johnson stated he feels that Councilman Taylor is on the right track. Mayor DeCora stated that she does not see that verbiage in the ordinance. Councilman Johnson stated that it still has to be written into this ordinance. Attorney Fodor commented that the emergency ordinance only changed the dates. If the council wants to have a first reading, take a recess to let him work on the language for a rough draft for the 1st reading. He also stated that there is a group of homeowners that need to be addressed. Mayor DeCora asked Ryan Erickson (Sunrise Engineering) to present his findings on those homeowners. Mr. Ryan Erickson stated he only looked at five specific homes. As he looked at those homes, the first option was, can they run a back line to service these homes by gravity. The findings were inconclusive, one of the homeowners could not get a hold of so he was unable to take any measurements, as for the other four, one is close, but he is making a number of assumptions, on the depth of their sewer lines, without any digging. Based on those assumptions there is one that is close and the other three could be served by the back lot line, the other thing he look at was, can they be served by a line running in front of their house; one a definite no, and there are three possible. Councilman Johnson stated that is with no lift station. Mr. Erickson said one issue at the back lot lines, will need easements that are needed to get over to the other road. An option to have a small lift station that would serve all five owners, cost wise might not be much difference. However he does not have costs on that. Basically at this point the findings are still inconclusive. Mayor DeCora asked so if we took these people out of Phase I, put them in Phase II until we have a solution. Councilman Taylor stated that he really does not like that idea, because it is not just these people there are others. There might be a solution in Phase II of burying the lines deeper. He really feels he that likes Mr. Hartenstein's idea of paying the connection fee and the ready to serve fee and hooking into the system when his tank fails is a great idea. Councilman Johnson stated that would save them the connection fee when their tank fails, but they need to have proof that their system is not workable. Council discussed the cost feasibility of lift stations in the area of those five homeowners vs. having one lift station for each homeowner. Again it was reiterated that an easement would be need by the property owners to accomplish this. Councilman Johnson restated those homeowners are going to have to prove their inability to be able to hook into the system. Mr. Erickson and the Council discussed the logistics of those houses hooking into the system. Johnson stated the urgency to get the homeowner to take advantage of the rebate system and get them to sign up for the connection.

Mayor DeCora suspended the council rules to take public comment from Patty Mobley. Ms. Mobley stated she has all the original blueprints, so hopefully that show where all the cleanouts are. Ms. Mobley also stated her concern that she might not ever be able to hook on to the system, because of the financial hardship. Councilman Johnson said that there might be some type of programs that she could look into for assistance. Public comment was also taken by Mr. Larry Hartenstein. He stated that he appreciates their flexibility in working with him, his situation is a little different than the other group, he is still willing to make those payment, but he does not want to dig up his yard, but it just gets back to the point that he was never informed

that this was going to happen. Councilman Taylor stated that his connection will be a much easier. But again Mr. Hartenstein stated he is not willing to spend any more money, he has talked with an attorney, but that is the last thing that he wants to do try to get involved in the town with that, it is just not him. Again he was not told. Of anything when he built his home two years ago, he is still willing to pay all those payments, but to hear about the yard dug up. Councilman Taylor again stated we have the records on his property and it is a newer home and will be much easier to make the accommodations. All he needs is an elevation from your cleanout and an elevation of the street to prove that you would need a lift station. The other thing if at all possible, for some language in the ordinance is that for us to have the ability to pass on the property to someone else and have the same situation apply to the new people. It is certainly important for commuter people, who know what is going to happen. Councilman Johnson, believes that they are pretty much thinking along the same lines. Attorney asked the council to come up decision as to what the criteria is for being able to opt out of the connection requirements. Councilman Taylor said demonstrating the need for a lift station, grinder pump or the negative elevation to the street. All properties owners need to incur their own expenses to prove their burden. They also discussed the language of septic failure, the proof of a financial and engineering burden and Phase II homeowners that want to hook on.

Mayor DeCora called a recess at 7:50 pm. Mayor DeCora re-convened the meeting at 8:17 pm. Mayor DeCora excused Councilman Johnson from the meeting at this time.

More Council discussion was held on the proposed ideas and changed to the ordinance. Attorney Fodor again reiterated to the Council that he strongly feels that there needs to be some type of objective criteria. Councilman Taylor and Attorney Fodor further discussed their ideas on credible evidence vs. concrete determinations. Councilman Taylor believes this is very simple, come up with a base line, the credible evidence is gathered just like that of the table used, make an educated guessimation of what it will be, with a deposit and at the end of two years it is set. He believes the council they will come to a reasonable conclusion. Attorney Fodor again stated his objection for the record, which is "his objection to the subjective criteria being considered by the Council for connection requirements in Section #12 of Ordinance No. 194 – 2009-49.

Councilman Taylor motioned to accept the proposed language suggested of items X, XI and XII into #194 - Ordinance No. 2009-49 for the first reading. Councilman Jorgensen seconded the motion.

Public Comments: Ms. Carla Stone, representative of SALL LLC presented the Council with a letter for De-Annexation. Ms. Stone wanted to address the Council however Mayor DeCora informed Ms. Stone that this is a special meeting and any items not on the agenda cannot be discussed and/or considered.

Vote: 4 yes, 0 no, 0 abstain, 1 absent (Johnson). Motion carried.

Councilman Jorgensen made a motion to adjourn the meeting. Councilman Taylor seconded the motion.

Vote: 4 yes, 0 no, 0 abstain, 1 absent (Johnson). Motion carried.

The meeting was adjourned at 8:50 pm.

ATTEST:


Brenda Bennett, Clerk/Treasurer


Date




Mayor Victoria DeCora


Date

