

MINUTES
SPECIAL MEETING OF THE SANDPOINT CITY COUNCIL
September 26, 2019

Mayor Rognstad called the special meeting of the City Council to order at 5:45 p.m. on Thursday, September 26, 2019, in Council chambers at City Hall, 1123 Lake Street.

ROLL CALL: Council members Ruehle, Aitken, Darling, Williamson and Eddy were present. Councilmen Aitken and Darling participated by phone. Councilman Aispuro was absent.

PLEDGE OF ALLEGIANCE: Mayor Rognstad led City Council and the public in the pledge of allegiance to the flag.

A. UPDATE ON THE U.S. COAST GUARD'S FINAL ENVIRONMENTAL ASSESSMENT (EA) FOR THE PROPOSED CONSTRUCTION OF RAILROAD BRIDGES ACROSS SAND CREEK AND LAKE PEND OREILLE

Matt Nykiel with the Idaho Conservation League (ICL) reported that it was anticipated the letter that the Mayor, during the September 18, 2019, meeting, directed staff to draft and present to Council during this evening's meeting, requesting an Environmental Impact Statement (EIS), would have been part of the Coast Guard's administrative review process. As he reported during the September 18 meeting, the deadline to submit such a letter was ambiguous. Since that time, he was able to ascertain clarity on the deadline, and discovered that the Coast Guard's decision is final, with no further comment being taken; the final Environmental Assessment (EA) they have issued is the final decision. This doesn't mean the decision is correct or legal, but the only recourse at this point is a lawsuit. He would still encourage the City to write a letter, requesting that an EIS be produced for this project. Such a letter would be symbolic only and is not required for the City to retain legal standing in this matter.

Mr. Nykiel confirmed for **Councilman Eddy** that there is no appeals process available in response to the Coast Guard's final EA for this project. The Coast Guard does provide for an appeals process but not for this particular decision. The only recourse at this point is a lawsuit. ICL is internally discussing their options. The Coast Guard released their final EA, with a "finding of no significant impact" that would warrant or require an EIS. Their final EA included an economic impact analysis, but there was no opportunity for comments, as that analysis was released in final EA, between release of the draft and release of the final, and no comments were taken during that time. The Coast Guard did look beyond the waterways in their analysis and sometimes expanded beyond the radius of the project, depending on the subject matter.

With interest from City Council, City Administrator Jennifer Stapleton confirmed that staff would draft a letter to present to Council at a future meeting.

Jeff Pufnock, owner of a new business located within Sandpoint city limits, stated that he recently relocated here due to the beauty of the area and is concerned about the impacts of this project. He wonders what advantages it brings to the community and the costs and responsibility for a spill and cleanup. Is there a response team in Sandpoint? A spill in the lake could potentially render it unavailable for recreation for a year or more. Who would be responsible for the resulting economic loss?

Helen Yost with Wild Idaho Rising Tide (WIRT) stated that her organization has been addressing this issue since inception of the project. She suggests that the City solicit public input in order to determine whether the points made in Council's May 2018 Resolution were addressed. It is her understanding that, after a final EA, a 30-day public comment period can be allowed, but the Coast Guard chose not to do so. It is appropriate for the City to respond, as significant work went into that Resolution, and the Coast Guard's response is an affront to the Council. WIRT is willing to provide any help it can offer. They've already found errors in the Coast Guard's decision. A letter could address the insufficiencies of the final EA. Approval of this project will result in a decade of construction and the impacts that come with it.

B. RESOLUTION NO. 19-55 LAKE CITY LAW GROUP, PLLC, ENGAGEMENT LETTER

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Ms. Stapleton reported that, because the lawsuit that has been filed against the City by Bonner County and Sheriff Wheeler regarding the ban on firearms at The Festival at Sandpoint, which leases War Memorial Field for their event, seeks declaratory and injunctive relief, coverage under the City's Idaho Counties Risk Management Program (ICRMP) liability insurance policy is not available. With no claim for damages, coverage is not eligible under our ICRMP policy, resulting in all associated costs borne by general fund, property tax dollars. This is not budgeted, so, if costs are too substantial, contingency savings may need to be used, and the budget may need to be opened.

City Attorney Will Herrington reported that Mr. Erbland recently successfully represented the City on a different case, and they have worked together on many issues. He has already discovered at least three motions for dismissal that could be made and will share those with Mr. Erbland. Mr. Erbland is charging the same rate as ICRMP, and it is a fair rate.

Mr. Herrington replied to **Councilman Eddy** that prevailing parties are frequently awarded attorney fees, but Idaho judges seem to be hesitant to award them, so we should not expect them. In his last court case, for instance, he prevailed, but the judge declined to award attorney fees. It's entirely possible that this case will be dismissed or settled on motion for summary judgment. Since this is a request for declaratory judgment, as opposed to the plaintiff seeking damages, there will be no expert witnesses, no depositions. It will simply be a question as to what the law and the Constitution require.

Councilwoman Williamson moved for approval of the proposed Resolution, LAKE CITY LAW GROUP, PLLC, ENGAGEMENT LETTER. **Councilman Eddy seconded the motion.**

A roll call vote resulted as follows:

Councilwoman Ruehle	Yes
Councilman Aitken	Yes
Councilman Aispuro	Absent
Councilman Darling	Yes
Councilwoman Williamson	Yes
Councilman Eddy	Yes

The motion passed by a unanimous vote of Council present.

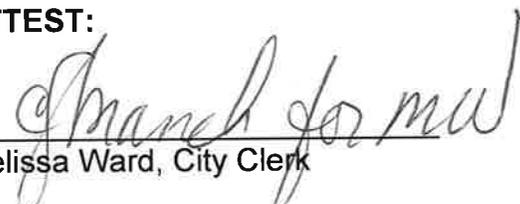
ADJOURNMENT

Mayor Rognstad adjourned the regular meeting at 6:05 p.m.



Shelby Rognstad, Mayor

ATTEST:



Melissa Ward, City Clerk