

New Plymouth City Council Meeting  
MONDAY  
20 April 2015  
Immediately Following Public Hearing  
New Plymouth City Council Chambers (Library)

On the 20th of April, 2015, the New Plymouth city council meeting was called to order at approximately 7:03 pm by Mayor Joe Cook. Roll call was taken with council members Warnke, Mayer, York and Kurth in attendance.

Staff members in attendance were Danielle Painter, Beau Ziemer, Gina Christensen and Andy Gerhke.

Regular Agenda – **Councilman Mayer moved to approve regular agenda. Councilman York seconded the motion. The voting was unanimous in favor of the motion.**

Consent Agenda – The consent agenda included 06 April 2015 Council Meeting Minutes, Sheriff's Report, Public Works Report and Claim Approvals totaling \$95,466.20. **Councilman Mayer moved to approve consent agenda. Councilman Kurth seconded the motion. The voting was unanimous in favor of the motion.**

Old Business

None

New Business

Increase Re-connect Fees & Late Fees – Council discussed the drawbacks and merits of a re-connect & late fee increase for the city and its residents. Concern was expressed by Councilman York of creating a hardship for those already behind on their bill. A possible graduated fee schedule for repeat offenders was then briefly discussed. City Clerk Painter and Deputy Clerk Christensen commented on the dramatic decrease in monthly shut-offs due to the fee increase and reiterated the re-payment options available to those truly in financial need. City Clerk Painter also mentioned that the increased fees were comparable to many similarly sized cities in the state. Councilman Warnke stated that he felt that a penalty for non-payment was appropriate and necessary. Councilman Mayer stated that the payment agreement offered by the city enabled residents behind on their bill to avoid being shut-off and having to pay the reconnect fee if they made the effort to communicate with city hall before shut-offs were done. Councilman York then commented that keeping the city accounts current also reflected in approvals of grants the city may apply for.

**Councilman Mayer moved to approve the ordinance increasing re-connect fees & late fees as presented. Councilman Warnke seconded the motion. The voting was unanimous in favor of the motion.**

Beth Earles to discuss the City's disregard for city code and state statutes; and the Pleasant Loop Subdivision – Ms. Earles read a prepared statement to the council, as follows:

The last time I came before the council in 2010 questioning the city's procedures I was told "we do things differently now". Since then, I have stayed away and have looked away when the city has not followed city code and state statutes. After attending the last two planning and zoning meetings, I can no longer continue to look away. It appears disregard for the city code and state statutes has become standard operating procedure for the city. You are not protecting the city from legal action but inviting it.

- State Code requires Planning and Zoning Commissions to meet no less than nine times a year.

In 2009, eight meetings were held.

In 2010 the city established meeting dates for the planning and zoning commission, as required by law, yet no meetings were held in 2010. The planning and zoning commission was left out of issues that arose in the impact area.

In 2011, one meeting was held.

In 2012, four meetings were held.

In 2013, one meeting was held.

In 2014, six meetings were held.

At the last two planning and zoning commission meetings, there were no minutes to approve and I was curious how long this had been going on. Minutes are the official record of city business and are to be kept in perpetuity.

- According to state code, minutes are to be produced in a "reasonable time".

The approval for May 28, 2009 public hearing and regular meeting minutes for the planning and zoning commission was put on the September 28, 2009 agenda, but according to the minutes were not mentioned or approved.

The approval for December 28, 2009 planning and zoning minutes was put on the November 28, 2011 agenda, but according to the minutes were not mentioned or approved.

The approval for July 23, 2012 planning and zoning minutes was put on the November 26, 2012 agenda, but according to the minutes were not mentioned or approved.

The approval for November 26, 2012 planning and zoning minutes was put on the March 25, 2013 agenda, but no meeting was held for lack of a quorum. There is no record of the minutes being approved at future meetings.

There is no record of approval for the following planning and zoning meetings, they were not even included on the agendas:

March 24, 2014 Public Hearing Minutes  
March 24, 2014 Regular Meeting Minutes  
April 28, 2014 Public Hearing Minutes  
April 28, 2014 Regular Meeting Minutes  
June 23, 2014 Public Hearing Minutes  
June 23, 2014 Regular Meeting Minutes  
September 22, 2014 Public Hearing Minutes  
September 22, 2014 Regular Meeting Minutes  
January 26, 2015 Public Hearing Minutes  
January 26, 2015 Regular Meeting Minutes  
February 23, 2015 Public Hearing Minutes  
February 23, 2015 Regular Meeting Minutes  
March 23, 2015 Public Hearing Minutes  
March 23, 2015 Regular Meeting Minutes

- Planning and zoning minutes since January 6, 2009 have not been signed. That date may be earlier - I didn't go back any further.

I found it interesting that your auditor enjoyed reading the minutes and reminded you that minutes can be subpoenaed by the court but neglected to tell you minutes, bills and monthly reports had not been approved since February 26, 2009. And that continues to present day. It appears the staff and council do not understand the purpose of the consent agenda. The city's minutes do not reflect what was on the consent agenda when the consent agenda was approved. The minutes are permanent records, agendas are not. Even using the agendas as a second source of record, the following council minutes were not included on a consent agenda.

September 1, 2009 Public Hearing Minutes  
September 1, 2009 Special Meeting/Regular Minutes  
August 16, 2010 Regular Meeting Minutes  
June 6, 2011 Public Hearing Minutes - no record of minutes  
July 5, 2011 Regular Meeting Minutes  
August 1, 2011 Public Hearing Minutes  
August 22, 2011 Public Hearing Minutes  
September 19, 2011 Public Hearing Minutes  
October 17, 2011 Public Hearing Minutes  
June 4, 2012 Regular Meeting Minutes  
July 2, 2012 Regular Meeting Minutes  
August 6, 2012 Regular Meeting Minutes  
August 20, 2012 Public Hearing Minutes  
July 15, 2013 Regular Meeting Minutes  
July 19, 2013 Special Meeting Minutes  
July 29, 2013 Special Meeting Minutes

August 19, 2013 Public Hearing Minutes  
September 3, 2013 Regular Meeting Minutes  
May 19, 2014 Public Hearing Minutes - no minutes  
May 19, 2014 Regular Meeting Minutes  
July 7, 2014 Regular Meeting Minutes  
July 21, 2014 Public Hearing Minutes  
July 21, 2014 Regular Meeting Minutes  
February 2, 2015 Regular Meeting Minutes  
February 17, 2015 Public Hearing Minutes - no minutes  
March 2, 2015 Public Hearing Minutes

- The city council agendas for July 2 and July 16, 2012 list under the consent agenda minutes for June 18, 2012, yet there are no minutes for that date.
- There are minutes missing the signatures of council presidents, the clerk and some are missing signature lines altogether.
- The mayor has not signed the minutes for October 4, 2010 and September 20, 2010.
- The mayor hasn't signed minutes since February 6, 2012.

I don't believe the council takes the time to read the minutes based on the fact you are willing to approve minutes with the abundance of spelling errors including your own names. When reading the June 15, 2009 minutes, they become the minutes of July 6, 2009, there is open forum, mayor and council comments, the meeting is adjourned, there is another open forum, mayor and council comments, and another adjournment. These minutes were approved.

In February, I saw notices in the paper for public hearings before the planning and zoning commission for zone changes for the Elementary School and Middle School. This piqued my interest because the zoning commission recommends zone changes of property, not buildings.

- The publication of the notice did not meet the requirement of State Statute 67-6509 and City Code 11-15-6 requiring 15 days notice.
- City Code and State Statute require notices to give the date, time and place of hearing, the name of the applicant, and relief sought, and identification of the property. The notice did not have an address for the property, state what the current zone was or what zone was proposed. This information was not included on the hearing and meeting agendas either.
- During the public hearing, it was apparent the applicant did not request a zone change. The staff and commission tried to determine the proposed zone. Considering the comprehensive plan and the compatibility of the proposal is required by city code and state statute, yet when a commissioner asked what the properties were designated on the plan, the staff questioned why the commissioner was asking. Why wasn't this information provided to the commissioners before the meeting? It was determined the Middle School

property didn't need a zone change, and the Elementary School needed a conditional use permit. The commission was ready to make a decision on the conditional use permit without scheduling a public hearing for such. During the regular meeting the staff not only left the meeting, but left the building. I believe this was to talk to the applicant, but not appropriate.

In March, I saw a notice in the Independent Enterprise for a public hearing to be held before the planning and zoning commission for a conditional use permit on the New Plymouth Elementary School. Then I saw the same notice in The New Plymouth Record except the hearing was for a zone change on the New Plymouth Elementary School.

- State Statute 67-6512(b) requires the hearing notice to have a summary of the proposal. The hearing notice regarding the conditional use permit did not state the address of the property or the purpose of the conditional use permit.
- The hearing and meeting agendas neglected to state the purpose of the conditional use permit.
- The purpose of the conditional use permit was not discussed by the applicant, the staff or the commission.
- During the regular meeting, a motion was made to approve a conditional use permit, but no mention of what the conditional use proposed.
- State Statute 67-6512(b) also requires notice be posted on the premises not less than one (1) week prior to the hearing. The property was not posted.
- The public hearing and regular meeting minutes for March 23<sup>rd</sup> do not reflect what the conditional use permit allows. Is the permit to allow construction? Allow a school in a residential zone? Allow RV sales in the parking lot? Allow a homeless shelter?
- I'm assuming there are no findings for this decision as required by City Code and State Statute.

I'm challenging the validity of the planning and zoning commissions decision based on the disregard for the city code and state statutes.

In regards to the Pleasant Loop Subdivision, I'm challenging the validity of the planning and zoning commission and city's decisions based on the disregard for city code and state statutes. .

- The planning and zoning commission held a public hearing for a preliminary plat of Pleasant Loop Subdivision on April 28, 2014. The public hearing notice did not meet the requirements of State Statute 67-6509 and City Code 11-15-6 requiring 15 days notice. Variances were addressed at this meeting, yet no public hearing notice was given for variances, nor was it included on the agenda. The minutes state "there was a list of who was all contacted and when in their packets as well as any comments that were given back". Why were these not read into the record?
- City Code 12-1-2(A) re: Jurisdiction states "these regulations **shall** apply to the subdividing of all lands within the corporate limits of the City". City Code 12-2-1 re: the Definition of Shall: The term "shall" designates a mandatory requirement.
- State Statute 50-1308 states "If a subdivision is not within the corporate limits of a city, the plat thereof shall be submitted, accepted and approved by the board of commissioners of the county in which the tract is located in the same manner and as herein provided. The preliminary plat was for property outside of the corporate limits of the city. The planning and zoning commission had no jurisdiction to consider the preliminary plat.
- The city council held a public hearing for a preliminary plat of Pleasant Loop Subdivision on May 19, 2014. The public hearing notice did not meet the requirements of State Statute and City Code requiring 15 days notice. - no minutes
- The minutes for the regular meeting of the city council reflect the following for an item described as Firkins Development Preliminary Plat Subdivision Decision: "Council Warnke moved to approve. Councilman Mayer seconded the motion. The motion passed by majority vote with Councilman Kurth opposing. Councilman Warnke moved to approve. Councilman Mayer seconded the motion. The voting was unanimous in favor of the motion." Two motions were made to approve - approve what?
- The city council had no jurisdiction to consider the preliminary plat.
- The planning and zoning commission held a public hearing for annexation, comprehensive plan change, zone change and development agreement on June 23, 2014. The public hearing notice did not meet the City Code and State Statute requiring 15 days notice. The public hearing notice stated annexation, comprehensive plan change, zone change and final plat of subdivision. The notice and agendas gave no information regarding the proposed zone designation or the current comprehensive plan zone and it's proposed change.
- The public hearing notice did not include development agreement as required by City Code and State Statute, although the development agreement was included on the public

hearing agenda.

- City Code 11-15-7(H) requires opinions of other local or state agencies required to provide services or issue permits be considered. I'm assuming no notices were sent by the city staff to other agencies and utilities to make them aware of the public hearing dates or ask their recommendations or concerns. No written testimony was read into the record.
- The city council held a public hearing on July 21, 2014 to consider annexation, comprehensive plan change, zone change and development agreement for Pleasant Loop Subdivision. The public hearing notice did not meet the City Code and State Statute requiring 15 days notice. The notice and agendas gave no information regarding the proposed zone designation or the current comprehensive plan zone and it's proposed change.
- The planning and zoning commission held a public hearing for final plat approval on January 26, 2015. The public hearing notice did not meet the requirements of City Code and State Statute requiring 15 days notice.
- The city council held a public hearing on February 17, 2015 for final plat approval. The public hearing notice did not meet the requirements of City Code and State Statute requiring 15 days notice.
- The legal descriptions published in each hearing notice were not correct legal descriptions. It had been noted that a legal description would be included on the final plat. Does the public not deserve a correct legal description?
- I'm assuming no findings have been written for these decisions.
- City Code 12-3-1A-2 states "no plat or description of land subdividing shall be filed in the office of the County Recorder until same shall have been acted upon by the Commission and approved by the Council in **preliminary and final plat form** as required herein. **No lots shall be sold from any plat until same shall have been recorded in the office of the County Recorder, Payette County.** Homes were allowed to be built before the final plat was approved and recorded. I don't believe the preliminary plat is valid and therefore the requirement is not met to allow filing with the county.
- City Code 12-1-3 states "**any person violating any of the provisions of this Chapter shall not be entitled to the issuance of any building permits for construction of buildings or otherwise on the land being subject to subdivision under the provisions herein**".

I don't believe the development of the Pelican Loop Subdivision should be allowed to continue until the process is done correctly.

Beth Earles  
112 SE Blvd  
New Plymouth, Idaho 83655

Kiwanis Park Discussion – Public Works Superintendent Ziemer informed the council that a small piece of property adjoining Kiwanis Park was being offered to the city by its current owner. He stated that the city had been maintaining the property for several years as part of the park and the owner now wanted to donate it to the city. The owner's only request was some type of monument or memorial be provided by the city and placed on the property to honor his late father. Public Works Superintendent Ziemer commented that he had received authorization from the city attorney to accept the arrangement. After some discussion, it was proposed that a stone bench would make a useful, fitting memorial and the council instructed him to proceed with the plan.

#### Ordinances and Resolutions

Ordinance 344 – Increase Re-connect Fee and Late Fee -

**Councilman Mayer moved to approve Ordinance #344 by title only, suspending all further readings. Councilman Warnke seconded the motion. The voting was unanimous in favor of the motion.**

#### Public Comments

Beth Earles stated that she felt that the council was confusing fees & fines and she would be asking for an account of fees collected by the city.

#### Mayor and Council Comments

Councilman York urged all to educate children on the dangers of irrigation canals to prevent any more accidental drownings. Councilman Mayer reminded all to be aware of children outside playing in or near the streets now that the weather is improving.

#### Adjournment

**Councilman Mayer moved to adjourn the council meeting. The motion was seconded by Councilman Kurth. The voting was unanimous in favor of the motion.**

The meeting adjourned at approximately 7:34 pm.

---

Joe Cook, Mayor

---

Gina Christensen, Deputy Clerk