

Index Town Council  
Monthly Meeting Minutes  
March 1, 2010

The regularly scheduled meeting of the Index Town Council was called to order at 7:00 PM by Mayor Bruce Albert.

**COUNCILMEMBERS AND ADMINISTRATIVE PERSONNEL PRESENT**

Bruce Albert	Pete Gott
Bob Hubbard	Sean Horst
Karen Sample	Lisa Stowe, Clerk Treasurer
Patrick Woods	Bill Cross, Maintenance Supervisor

Minutes from the February meeting were read. Gott moved to accept the minutes as presented and with a second by Woods the motion carried.

Stowe read the February warrants, numbered 2784 through 2804. Payroll and tax warrants totaled \$4734.80 and all others were \$5352.21 for a grand total of \$10087.01. Sample asked if the warrant to Ogden Murphy was for her phone call. The bill states it is for internet questions, which probably was the phone call. Woods moved to pay the warrants as presented and with a second by Hubbard the motion carried.

During public comments resident David Cameron asked the Council to reauthorize the community garden. Albert said when the garden was approved last year no one thought about it as ongoing. He asked if the Council wished the garden to continue, and to stay with the same price of \$15 per plot for the year. Horst moved to keep the garden going at \$15 per plot. Sample seconded the motion. Hubbard could see no reason to change rates. Cameron said he believed the garden had ten people assigned plots. Albert asked for the same conditions as before, where the gardeners take care of clerical duties and give the town one check. As there was no further discussion a vote was called and the motion carried.

Under the Sherriff's report, Deputy Ross was informed of a pervasive problem with gas thefts, vandalism, thefts of property, and tires slashed. Residents are urged to call 911 as Deputy Ross was only aware of one incident. Cameron suggested bringing back the Block Watch program. Deputy Ross said if people don't call, the deputies don't learn what's happening and can't get the data they need. He said it may take time to get to town depending on what other calls they are on. Residents can fill out incident reports on line, which gives them an incident number. Or they can call 911 and request to have an incident report mailed to them. Another option is getting one from the town hall and either mailing it or dropping it off at the fire department. Residents could also call 911 and request a call back from a deputy. There may be a wait for a call back depending on what the deputies are doing.

Albert asked if Deputy Ross could assist with a Block Watch program, which he can. The sheriff's website also has information on the program. Albert also said the current contract is a bare minimum and Index could request more patrols for an additional cost. Deputy Ross said he's usually up here more than the requirement and works hard at paying attention to what's going on.

Cameron asked if there were any suspects and Deputy Ross said no. He reminded residents that even in a small town homes and cars should be locked.

Under council comments Gott had health issues that prevented him from taking a look at the car in the watershed. He has been walking around town taking a look at town properties and the uses going on. He's noticed it's getting built up and looking trashy. He and Albert will be working on this.

Sample did some internet work but had nothing to report. She received a letter from the school complaining about not being notified to boil water after the water line break. Albert suggested updating contact information and Stowe will work with Horst to come up with a more visible way to post signs. Albert asked that Water Manager Peterson be involved to make sure Health Department requirements for notifications are met. Sample said the fire department has been talking about doing something similar and maybe the two entities could work together.

Stowe voiced frustration that in spite of calling people, leaving messages, and posting signs, there always seems to be someone who complains they weren't aware of the posting.

Sample said the Old Fire Hall smelled of mildew when she walked in and wondered if there was a leaking problem. Cross said there had been a large meeting there during the rainy spell so it was probably due to all the wet rain gear. He hasn't seen any signs of leaking or mildew.

The Planning Commission met and is writing the new Critical Areas Element. Cross asked people to lobby friends and neighbors to fill the empty position.

Under the maintenance report, Cross is having problems with something blocking the women's toilet at the park. He's going to make another attempt to clear it and may have to call a plumber. Sani-cans are being considered for upcoming events and Albert wondered how to make sure they were used as well as the park bathrooms to avoid overflow of the septic system. Cross said two sani-cans were used last year during the Art festival and there were no problems.

Albert received a letter of intent from Snohomish County Drug Task Force. The purpose is to show intent to enter into an interlocal with the Force. No one had issue with signing the letter.

The Sportsmen's group has elected to discontinue use of the Trapgrounds and is closing the area out. The Forest Service sent them a letter with a copy to the Town of issues that must be dealt with prior to closing. These include illegal wiring and a barrel used for human waste storage. Albert would like to see some earth mover tires taken out as they are expensive to dispose of. He also wants the gate left closed and locked to avoid squatter problems. There are efforts in the community to rehabilitate the area and he supports that, but also thinks it is foolish to open the gate up. There were no Council objections to Albert writing a letter to the Forest Service listing the Town's concerns.

Resident Anthony Vega said his organization may help the Sportsmen's with the clean up and asked if he could be cc'd on the letter from the town. Albert said the letter would be sent to the principles involved and would leave it to the Sportsmen's to communicate requests as they see fit.

Stowe has annual reports from the Drug Task Force and Snohomish County Tourism Bureau at the Town Hall for review. She also presented the Council with a letter from a resident commenting on the use of public land. The letter had no request for action and appeared to be informational only.

At 7:55 pm Albert called into order a Public Hearing to review a Shoreline Application. Tobey and Cobi Seslar had a garage collapse due to snow and wish to rebuild it. The site is not in the 100 year flood plain, not in a critical area, and has no zoning issues. But because it is within two hundred feet of the shoreline, the application brings in the Shoreline Management Act.

Albert reviewed the requirements for a Public Hearing. Comments received can only be relevant to the project, in this case, the Seslar's request for an exemption from having to get a Shoreline Substantial Development Permit. WAC 173 is relevant and has been reviewed. All parties requesting that the hearing be continued will be considered. The Council must be impartial and must disclose any communications on this project under appearance of fairness, meaning not only must the Council be fair, but must also avoid any appearance of being unfair.

Albert asked if any Council member had visited the site, which none have done. He also asked any persons wishing to be notified of the Council decision to let Stowe know.

The application includes a report created by Stowe, a site plan showing the project is over one hundred feet from the ordinary high water mark, and showing the replacement construction will be in the same footprint size as the collapsed building.

Where the law becomes muddy is that it appears the applicant may just need an exemption and not a variance. The relevant WAC lists what doesn't need a permit and this includes the construction of a single family residence and its appurtenant buildings. Albert explained to the Council that the criteria for exemptions must be

construed narrowly, and only granted for what meets the exact wording. He also said the exemption does not necessarily mean the applicant is exempt from other permits. The burden of proof is on the applicant.

The confusing part is the variance requirements. It appears the Seslar's would only need a variance if they were building the structure bigger than the original. In Albert's opinion the project does not need a variance but only an exemption.

Sample asked if that meant the applicant didn't need to have done the paperwork. Albert said no, the paperwork was required in order to gain an exemption. He said if the Council recognizes and approves the exemption request the decision is then mailed to the Department of Ecology, who reviews it and has final say in approval. The Council has the right to approve, approve with conditions, deny, deny with prejudice, or deny with conditions.

Stowe told the Council that they must be careful not to abuse exemptions and make sure the approval meets the exact exemption requirement. One common abuse of exemptions was granting them for a project that was bigger than the original. In this case the new construction will be shifted a couple feet from the original site, but only to be in compliance with Index Municipal Code setback requirements. In this case there appears to be no abuse of an exemption request.

Sample asked if they were haggling over the correct political approval. Albert said this is a quasi-legal decision. Sample asked if that meant it had to be worded correctly. Albert said no, to look at what the applicant wanted to do, compare it with the requirements that had to be met, and decide to the best of the Council's ability if the proposed activity fell within the scope of the requirements.

Albert clarified that the Council is deciding if this project is exempt from needing a Shoreline Substantial Development Permit. He also said one of the difficulties for the Council in deciding this is that they are not full time land use specialists and yet they must deal with a more difficult process and increased responsibility to the applicant and all concerned properties.

Sample asked if they were defining law right now or making a decision based on what the law is. Albert said they must read the exemptions and decide if this project applies or not.

Hubbard feels the application meets the requirements for exemption. Under the fairness doctrine, he pointed out the applicant has the right to expect to be able to do the same work that neighbors can.

Woods moved to accept the application and Sample seconded the motion. Albert requested that the motion be amended in order to include wording about the exemption. After consideration Woods withdrew his motion.

Woods then moved to declare the application project exempt from requiring a Shoreline Substantial Development permit. Sample seconded the motion.

Sample asked if the Department of Ecology didn't like the Council decision would the Town be in trouble and would there be recourse for the Town. Albert said this was unknown and found it annoying to go through all this work when Ecology makes their own decision anyway. But, he said, the flip side of that is that Ecology is also the agency responsible for any liabilities.

As there was no further discussion a vote was taken and the motion carried.

Albert asked if anyone wanted the record to remain open. No one did and the Public Hearing was formally closed at 8:25 pm.

Yvonne Lawson, president of the Art Festival, submitted a Special Events Checklist for the August festival.

Hubbard asked if 5<sup>th</sup> Street was going to be closed off or people routed through Reiter Road. Lawson said no, that it will be done the same as last year.

Gott asked if the group would seek an exemption from the noise ordinance to allow music to go longer than ten pm. Albert said in previous years the music has gone well and that requests were made to him as the mayor to play longer and this didn't seem to be a problem.

Stowe reminded Lawson that there had been suggestions made to hire off duty deputies and that Lawson had planned on asking the Council to consider taking care of this similar to what previous Councils did during Fourth of July celebrations. Deputy Ross gave Stowe information on hiring deputies.

Albert said the Festival has become a victim of its own success and while last year was 99% successful there was a small group of people drinking heavily. He then asked Lawson if the application addressed parking. She is hopeful that the group will be able to use an empty lot on the other side of the river as a parking area, with people designated to direct traffic. Resident Ed Boress suggested charging for parking but Lawson was not interested.

Horst moved to table a decision on the Checklist for a month and with a second by Gott the motion carried. Albert confirmed for Lawson that the group could continue with meetings and his sense was that approval of the Checklist was a foregone conclusion but some details may need more information. Sample thanked Lawson for getting the Checklist in so soon, giving the Council time to review it.

As there was no further business Sample moved to adjourn. Horst seconded the motion, and the meeting was adjourned at 8:35 pm.

Adopted by the Index Town Council this 5<sup>th</sup> day of April, 2010.

Signed: \_\_\_\_\_  
Bruce Albert, Mayor

Attest: \_\_\_\_\_  
Lisa Stowe, Clerk/Treasurer