

City Council Minutes

Public Hearing & Special Meeting

December 9, 2009



In attendance: Mayor Rex Jardine; Council members: Deck Green, President; Tom Abbott; Orville Armstrong; Tiera Ball; Jan Gallup, Planning Consultant; Bart Birch, City of Tetonia's attorney; Brad and Justin Egbert, Richard A. Egbert, L.P.; Hyrum Erickson, Egbert's attorney; community members (see sign-in sheets)

Public Hearing: Egbert Annexation

Public Hearing opened at 7:00 p.m.

Mayor Jardine welcomed those in attendance and read a statement outlining the process to be followed for this public hearing: Brad Egbert, Richard A. Egbert L.P. representative, to present first; Jan Gallup, planning consultant for the City of Tetonia second; public comment with a three minute per presentation limit followed by a summary of written comment received given in "for", "neutral", & "opposed" order; Egbert re-address; close the meeting.

Richard A. Egbert, L.P. Annexation

Brad Egbert opened his presentation by disclosing that he has been appointed to the Rexburg [ID] City Council.

Egbert then addressed the benefits to the City of Tetonia by annexing the 267 acres as proposed. He stressed that at the present time there are "no development plans" being brought forth. Eighty of the proposed acres will be protected as wetlands/riparian ground. Benefits highlighted were: (1) eventual increase in taxes to the city; (2) revenue from hook-up fees for water and sewer (\$9000 for each home); monthly water/sewer billing revenue; and ground water protection.

Egbert discussed the possibility of converting an existing irrigation well to municipal water use. He quoted from the 11/6/09 Winston Dyer Engineering report (see Egbert file) which estimates the cost to the city to purchase an existing water right at \$50,000, if one can be found for sale, and the cost to develop a culinary well at a minimum of \$67,000. Jerry Rigby, a preeminent water resources attorney, would be used to assist with the transfer of the water right to the city. Egbert addressed concerns that the transfer might not occur when he quoted Warner, "transfer for municipal uses are not often denied."

Concerns over development in the known wetlands/riparian acreage were addressed via the report commissioned by the Egbert's from Kagel Environmental (see Egbert file). Approximately 80 acres of the proposed 267 acres are classified as wetlands. There is no development planned for these wetlands/riparian acres.

Future development of the remaining 187 acres would be governed by the city's comprehensive plan

and by a committee established by the Egbert LP. The committee would be charged with review and approval of internal covenants and restrictions. It would also work with the city's planning & zoning commission to attain the goals of the city's comprehensive plan to offer a variety of housing options including "home clusters;" "open areas;" and "wetland buffer zones."

Egbert closed his presentation by stating his and the Egbert LP's goal of maintaining a "synergistic effort" between the Egbert LP and the city of Tetonia during the process of annexing and developing the acreage under consideration.

Jan Gallup, Planning Consultant

Gallup opened her comments by stating that she approached the annexation from a "planning consultant view." A PowerPoint presentation followed (see Egbert file).

In her presentation Gallup addressed concerns ranging from attorney conflict of interest to the legality of a category "A" annexation. Each concern was presented separately with justification/legality of the concern listed in a side-by-side analysis.

Gallup stated, "I would like to see the property annexed as a whole to protect wetlands, open spaces."

Comprehensive plan highlights included the goals of (1) enhance and preserve the character of Tetonia - City control would facilitate this. (2) manage growth & development – Gallup quoted from a 11/13/09 letter from Gerald Williams of Williams Engineering (see Egbert file), "... if the property were annexed into the city, the City is in a position to play a much more complete and needed role in the overall master planning with respect to impact on city infrastructure and facilities ..." (3) Promote sustainability of Tetonia.

The final portion of Gallup's presentation debunked the impression that the annexation would create "excess requirements" on the City of Tetonia.

Oral and Written Comments

For (oral)

Mitch Smaellie: Long time resident, positive about annexation. With a "proper development agreement" he "cannot see how the city can lose" if the developers are held accountable. Comprehensive plan via P&Z will help assure compliance with City wishes.

Mathew Berry: in agreement. Annexation would provide water rights, increased income, and governance

Michelle Berry: twenty-eight year resident believes the annexation is a "great fit for Tetonia." It allows for increased revenue and expansion.

Ron Berry: Lifelong resident who has previously served on the P&Z and council. Asked that the city council "listen to what will benefit the city" and that it be "fiscally responsible." Berry sees development by the Egbert's as a huge positive. He believes there is great "potential. Tetonia has the greatest view and the greatest assets in the valley."

Richard Berry: stated that it is the “council’s responsibility to help us out. I live as close to it [annexed land] as anybody.”

Steve Hobley: resident of Sugar City, ID. “I live in a little town with a nice new business park with one business in it. Changes are going to happen. You can be a part of it or let it happen.”

For (written, see Egbert file)

Jerry & Maxine Edgington (received 11/30/09): City guidelines would control development which “would allow for optimal open space, which could protect the creek and the wildlife corridor.” Utilities “could be provided more consistently and efficiently and at a higher standard than would exist otherwise.” Final point, “increased tax revenue.”

Neutral (oral)

Lynda Olesen: “I just came to listen.”

Stephen Foster: is there a need for increasing available real estate “in this market?” protested water rights could be held up for years; \$43 in additional revenue “will not go far;” he asked that council members “listen to current residents.”

Lou Simonet: Teton County Engineer – cautioned the council on two areas of concern (1) the estimated cost to maintain the roads in Teton County did not include the cost to chip seal which should be done “at a minimum” of every seven years. The County has not chip-sealed the road included in the proposed annexation “for at least ten years.” The cost to chip-seal is “approximately \$30,000 to \$50,000 or \$4,000 per year.” (2) Further advised the council to be sure that any and all water rights/wells are “deeded to the city, including easements, in writing.”

Lisa Nyren: editor, Teton Valley News – questioned whether council members had followed the second bullet point, *Ex parte* contact under Quasi-Judicial Hearing contained in the pamphlet “Public Hearings: A Citizen’s Guide” (See Egbert file). Jan Gallup clarified that she provided the pamphlet as a general guide for the annexation public hearing, the pamphlet was not provided by the City of Teton.

Neutral (written) – none received

Opposed (oral)

Kari Desser: Teton P&Z Commissioner – read a letter signed by all current P&Z members (see Egbert file). This letter reinforced the reasons why the P&Z recommended denial of the proposed Egbert annexation.

Speaking on a personal note, Desser informed the council that there is an estimated 14 year inventory of vacant land and an estimated nine year inventory of developed land currently for sale in Teton County.

Sue Tyler: 24 year resident and a former P&Z member – expressed appreciation for the leg work already done and expressed concern surrounding the “huge” commitment the annexation is. After tonight’s presentations, she stated she is “not dead set against the annexation” but cautions the council “to look at this thoroughly before making a decision.”

Anna Trentadue: attorney, Valley Advocates for Responsible Development (VARD) – addressed the council on four specific concerns (1) recommended that the council not vote on the annexation tonight based on assertions received from Stephanie Bonney which VARD believes are “pieced and parceled;” (2) warned that a “declaratory judgment can be sought” due to the “flawed process” of the annexation to date; (3) requested that councilmember Armstrong and Mayor Jardine recuse themselves based on the “Idaho Ethics in Government Act” due to prejudicial statements made; and (4) against the annexation based on factors presented in VARD’s written comment submitted earlier (see Opposed (written)) below.

Allen Wilder: has “questions and deep concerns.” (1) Irrigation well – what are the costs to start from scratch? Will there be a written agreement? Will the water right transfer?; and (2) how will the topography of the annexed land affect future costs? Will a sewer system study be conducted by the city if (when) the land is developed? Who would cover increased costs if pumping is required?

Dan Burr: does not live in town but has concerns because the annexation would “directly affect me.”

Tim Tanner: has land on the southern end of the proposed annexation property. He stated that, “... 5.73% of Tetonia abuts the Egbert land. There is something wrong about the process where 6% can override 94%. I hope you know what you’re heading in to.”

Josh Weltman: stated that he is in favor of “anything that will help Tetonia.” He has concerns because there have been “zero concrete proposals” offered. He is also concerned because he has been trying to get a response from Egbert LP “for two years concerning the Rails-to-Trails park proposal.”

Claire Vitucci: lives just out of town but has “great aspirations for Tetonia. She is “afraid property rights of other residents would be affected” citing the sprawl surrounding Victor and Driggs. She believes having a “walkable community is vital.” Her other concern is the timing of the annexation considering the over-supply of homes available valley wide.

Frank Byers, Jr.: questioned when the money would come in to Tetonia’s coffers; whether clearance from the Army Corps of Engineers would be required to build in the wetlands; and stressed the need to have a “good game plan” in place.

Gloria Hoopes: stressed that she is in favor of “development and growth” but believes the council has “jumped the gun here. We don’t know what development plans are.” She stated her belief that the annexation is not “timely. No one is buying now.” She went on to state her belief that approval of the annexation would “leave a bad taste.”

Bette McTigue: believes the council has put the “cart before the horse.”

Thad Beard: no longer present at meeting

Pam Prescott: lives directly across from land to be annexed. She is concerned about the financial burden on the city and affect on the wildlife corridor.

Emmett McCarthy: expressed “deep concerns” about the costs to current residents. Other issues included the well and wildlife affects (written comment also submitted).

Sandy Mason: advised the council that the anticipated revenue increase with annexation would be \$44.34; that only 40% of water transfers in the state of Idaho are currently being approved; asked that the council look at the “bigger picture” and not get “lost in minutia.” He stressed that it the annexation would probably have “negative costs to Tetonia before development” and that it may be “emotionally the wrong time” to annex.

John Stukel: deferred to his written comment

Hope Strong: requested that the council remember that the city needs to be run as a business; council members need to represent “present clientele, not those in the future.”

Larry Young: representing self not Teton County – warns that Tetonia is considering approval with “only revenue in sight.” Teton County will take “70 years to build out current inventory of available land. It will be a long, long time before it makes sense to build in the county.” Another concern was the property rights of the land owners “encircled by the L-shaped dog-leg.” Young commented, “When a solid development plan is in place, with solid money, it may be the time to annex some or all of the proposed acreage.”

Scott Montgomery: read his written comment (see Egbert file) which focused on real estate values in Tetonia. He asks that the council consider (1) wetlands; (2) wildlife corridor; (3) zoning; (4) timing of hookup fee benefits; (5) overall development concept; (6) water plan for the future; and (7) are there additional or undisclosed incentives?

Andy von Gleich: representing self not Tetonia P&Z – he is against the annexation because “this valley has tanked.” He stated his believe that with “straightforward thinking and with careful consideration”, the council will not approve the annexation.

Jo McTigue: four year resident who moved to Tetonia “because of the enthralling beauty.” She is concerned that “once the beauty is gone, it’s gone”. After the land is developed, “it’s all over.”

Rea Fullmer: spearheaded submission of petitions (see Egbert file) against the annexation. (Note: Billy Cutler requested removal of his name. He stated he did not sign the petition.) Specific points addressed by Fuller (1) no bridges considered; (2) protested water rights can be “held up in court for years;” (3) “\$43 dollars in additional revenue will not go far,” council should “listen to current residents.”

Jeff Paradis: concerns expressed were for current residents. Would they be facing increased water/sewer rate? Would the quantity of water improve? Would the residents gain greater water rights?

Opposed (written, see Egbert file)

Scott Montgomery: (received 12/01/09) see Oppose (oral) comments above

Bob & Valerie Margulis: (received 12/01/09) points covered were (1) unsubstantiated tax revenue with “little regard for the value of a Comprehensive Plan;” (2) unknown water needs for Tetonia residents; (3) resistance from Teton County with potential for “costly litigation”

Emmett McCarthy: (received 12/02/09) see Opposed (oral) comments above

VARD: (received 12/02/09) focused its letter on “hard facts” of the annexation: (1) the true costs of road maintenance and upkeep. (2) Tetonia’s State funds are dwindling. (3) There is no guarantee on the transfer of the well. (4) The growing law enforcement loophole. (5) Councilman Armstrong’s bias.

John Stukel: (received 12/02/09) addressed his concerns through six questions: (1) Why are the Egbert’s offering this property up for annexation at this time? (2) Would the annexation increase the benefit to Tetonia from this proposed development? (3) What obligations would the annexation bring on to Tetonia and how would Tetonia pay for them? (4) Why should the resident[s] of Tetonia take on any risk for this proposed development? (5) What happens if Tetonia does not annex the Egbert property at this time? (5) Why can’t Tetonia just annex a portion of the property now and wait to annex the rest at a later date if it makes sense at that time?

Petition (see Egbert file) signed by (49) landowners and registered voters (not verified).

Egbert Re-address

Points covered during redress included: (1) some “basic concepts” for development have been done; however, an “established plan” has not been generated. (2) Well transfer to the City – there will be some cost to the City “but less than starting new.” (3) Rails-to-Trails – interest has been noted in stockyard corrals – no contact made prior annexation decision to avoid impression of conflict of interest. (4) Kagel wetlands study will be recorded with the Corps of Engineers. “We [Egberts] will not build in wetlands. We are willing to work with adjacent landowners and Rails-to-Trails” to reach a compromise beneficial to all. (5) No one has a crystal ball to see what will happen in 2-10 years, “What’s wrong with trying to be prepared when the time is right?” (6) Initial costs to the city will be minimal. (7) “We look forward to working with the city’s P&Z Commission and with the Council. Regardless of tonight’s outcome, we will come back.”

Public Hearing Adjourned at 9:10 p.m.

Special Meeting Opened at 9:22 p.m.

Pledge of Allegiance.

Egbert Annexation Facts & Findings

Bart Birch, city attorney, addressed two points associated with the duties of the council (1) legislative and (2) quasi judicial. He then discussed the annexation process.

Legislative duties include passing/enforcing ordinances, which in essence are “new laws for the city;” and creating/enforcing policy. Annexation is deemed a “legislative function via ordinance” per the Idaho Supreme Court decision in *Crane Creek Country Club v. City of Boise*.

Bias is “more difficult to hold” under legislative duties. Opinions and reasons for/against are “a function of being legislative.”

Quasi-judicial duties include protecting (judging) residential property rights through variance and zoning requirements. *Ex parte* requirements include disclosure of contact where an issue under consideration is specifically discussed; and, independence. Courts have determined that a public official should recuse him/herself if “a firm mind set” for or against a decision is already in place. Ethics in Government prohibits participation if an elected official stands to “gain an economic interest.”

Birch expressed his belief that the council was “doing the right thing” by holding a second public hearing even though doing so was not required. “Holding a public hearing opens you up. A court of law may reject the council’s decision and return the decision back to the P&Z and council for reconsideration.” The process followed to date has been “reasonable.” Wording of the ordinance is “difficult” due to phrase “30 days once recommendation is received.” (1) P&Z public hearing was held on 11/2/09, recommended denial of application. (2) City council met on 11/9/09. Draft P&Z minutes were presented at this meeting. At its meeting the council had the following choices: a) follow P&Z recommendation to deny, b) reject P&Z recommendation, c) defer decision and hold a public hearing. Tonight’s public hearing was held “as timely as possible” considering original notice from P&Z and timing of legal ad publication only once per week.

Council member Ball requested clarification of potential “conflict of interest” as a result of her job at a title company in Teton County. She clarified that she has “never used my employment or city council position to gain business.” Birch restated the Ethics in Government prohibition to “gain an economic interest.”

Council member Armstrong reported that he has been “in town longer than anyone at this meeting.” He has been threatened with loss of income if he votes in favor of the annexation. He will not “be swayed by threats one way or the other.”

From the public hearing, council president Green sees the irrigation well as the main concern. He believes the “well is needed now. A DEQ consent order is in the near future to have a second water source for the city”. He “does not believe a court would deny water rights for municipal use.” He has questions about “when development will begin. Right now there is a lot of guesswork. At present, no one can say what annexation will cost Tetonia.”

Ball asked if Egberts would be interested in annexing a smaller parcel of land. “Would maintenance of the one mile of road remain with the County if only the west parcel was annexed?”

Mayor Jardine: “Depends on how the deed is recorded. Egberts do not own the road. The County does have a right-of-way easement.”

Council member Abbott: would like to see more information on development, “haste is dangerous.” The best way to proceed would be “efficient, fair, & slow” when considering development.

Armstrong: city already has 120-160 acres, “annexing can only help the city. Development would have to go through the P&Z.”

Jardine: the council’s decision is “strictly about annexation. Zoning leaves the land the same as currently zoned in the County.” Residents are “given the chance to have input at the time of zoning requests.” If the land is not annexed into Tetonia, Egbert’s can “still build to county specifications with wells and septic tanks.” Whether annexed or not, “the property owners need to fund development.”

To expressed concerns that he has already made up his mind, Jardine noted that as mayor, “I do not vote unless the council ties.” To the comment that “development never pays for itself,” Jardine replied that “Tetonia council members are not developers,” if there is no new development, only the current residents will have to pay to maintain services.”

Jan Gallup, planning consultant: “tentative land survey shows the city should not be responsible for road maintenance.”

Armstrong: “Can the city control how the road is to be maintained?”

Ball: did not see how annexation would impact current residents. Residential development would not be detrimental to the downtown core. “It could be 5-10-20 years before the county turns around, there may be enough residents by then to support core businesses.”

Jardine: the annexation agreement “can prevent Victor type problems.”

Armstrong: “comments have been to develop from the ‘core outward’, but all of Main Street is not zoned commercial.”

Ball moved to put the vote on the Egbert annexation on the 12/14/09 City Council’s regular meeting agenda. No second. Motion died for lack of second.

Council summary:

Armstrong: concerns answered; best financial decision for city.

Abbott: torn in two – responsibilities to the city (revenue & success); yet equally responsible to residents. Not worried about subsidizing development.

Jardine: petition against annexation contained 49 signatures, 22 of which are registered voters. Petition states that the signers are against the annexation “subsidizing the cost to annex”

Ball: annexation itself will not affect wetlands or wildlife; it would add one mile of road to be maintained.

Jardine: concerned about creating a “kind of island” with annexation of the east dog-leg parcel. Not concerned about added costs to the city which would be minimal. “If growth does not occur, \$50-55 in additional fees may be necessary to support the two bond issues approved by current residents. Existing pre-sold water/sewer hookups will not generate new revenue if taped into the system.”

Gallup: Draft annexation agreement calls for development in phases

Birch: the council has 30-days to make a decision

Armstrong moved to make a decision on the Egbert annexation at tonight’s meeting. No second. Motion died for lack of second.

Gallup: if a decision is not reached tonight, “in fairness to the applicants, no additional comments or information should be entered for consideration.” Decision would be made on “information already presented.”

Allen Wilder: Continuation of the meeting would allow for additional time to reach a decision.

Birch: the council can vote to continue to “ask for additional information from applicants or from person(s) who testified – may limit continuation to new information only.”

Ron Berry: advised the council that there would be “a lot of pressure between now and making a decision. Make a decision and live with it.”

Armstrong: “Everyone is concerned about what’s going in over there. If annexed, the city’s P&Z can control what occurs.”

Green moved to vote on annexation tonight. Armstrong seconded. Motion carried with two aye votes (Green & Armstrong)

Green moved to deny the Egbert land annexation proposal. No second. Motion died for lack of second.

Armstrong moved to approve the Egbert land annexation proposal. Abbott seconded. Discussion: Ball – only concern is the cost & time to maintain the additional road. Jardine – revenue sharing is down statewide. If vote is to annex, the additional road can be included in the city’s transportation study. Road maintenance/repairs may then be fundable by grant money. **Questions called by roll: Armstrong, aye; Abbott, aye; Ball, aye; Green, nay. Motion carried.**

Jardine: the motion was to approve the proposed Egbert land annexation. Next step will be to reach an annexation agreement that satisfies both parties. If a mutually acceptable annexation agreement is not reached, the land will not be annexed. If an agreement is reached, the council will need to pass an ordinance to actually annex the land.

Ball moved to continue discussion on the annexation agreement to the city council’s regular meeting on 12/14/09. Green seconded. Motion carried unanimously.

Ball moved to adjourn. Green seconded. Motion carried unanimously.

Special meeting adjourned at 10:45 p.m.

Rex Jardine, Mayor

Date

Carol Lenz, City Clerk/Treasurer

Date