
CITY OF SEDRO-WOOLLEY

Regular Meeting of the City Council
August 27, 2008 – 7:00 P.M. – City Hall Council Chambers

The Meeting was called to order at 7:00 P.M.

Pledge of Allegiance

ROLL CALL: Mayor Mike Anderson, Councilmembers: Ted Meamber, Tony Splane, Louis Requa, Pat Colgan, Hugh Galbraith, Rick Lemley and Dennis London. Staff: Recorder Brue, Finance Director Nelson, City Supervisor/Attorney Berg, Engineer Freiberger, Planner Moore, Police Chief Wood and Fire Chief Klinger.

Consent Calendar

- Minutes from Previous Meeting
- Finance
 - Claim Vouchers #64239 to #64368 in the amount of \$3,843,868.40
 - Payroll Warrants #43208 to #43316 in the amount of \$180,037.64
- Street Closure Request – Founders Day – September 13 & 14, 2008
- Professional Service Agreement – IT Support
- Possible Bid Award – 2008 Sanitary Sewer CIPP Project

Finance Director Nelson requested Claim Voucher # 64319 to Peoples Bank in the amount of \$3,005,314.77 be voided and reissue manual warrant #64369 in the amount of \$2,881,227.67 which relates to item 9, the funding and payoff of interim financing. She noted that since the agenda's went out there was one draw that did not take place which reduces the amount owed to the bank.

Councilmember London moved to approve the consent calendar with the changes of voiding voucher #64319 for \$3,005,314.77 and reissue a manual warrant #64369 for \$2,881,227.67. Seconded by Councilmember Meamber. Motion carried (7-0)

Proclamation – Constitution Week – September 17 – 23, 2008

Mayor Anderson read the proclamation which proclaims the week of September 17 through September 23rd as Constitution Week which requests citizens to reaffirm the ideals the framers of the constitution had in 1787 by vigilantly protecting the freedoms guaranteed to us through this guardian of our liberties.

Public Comment

Brett Sandstrom – 432 Talcott St., referenced a quote “I like the dreams of the future better than history of the past” (Jefferson to Adams, 1816) and spoke of the future for his

infant son and the duty of the City Council to govern the City and to govern it well and by the will of the people they represent. Sandstrom spoke in opposition of the location of the recycle facility and encouraged Council to find a resolution to the situation.

Loren Vaughn – 215 Ball St., noted he lived on the corner of Ball and Waldron and because of the construction within the area they are getting heavy traffic traveling down Waldron and questioned if there is any consideration for repairs.

Engineer Freiburger noted it they will be addressing the repairs within the project.

Douglas Wilson – 802A Rita Street, referenced the vision and mission statement printed on the agenda and spoke against having a dump within the City. He also questioned the statement regarding the potential liability of the Mayor and Councilmember's spouses.

Bonnie Dales – 411 Jameson St., addressed the Council and stated what they are doing is wrong by not listening to the citizens. She encouraged Council to stand up for themselves and not be bullied or led by others. She noted the Council's reaction of looking scared or smug and questioned whether they cared about the City and whether they are doing their job by polling the citizens, stating that not once in 15 years has any Councilmember come to ask her opinion. Dales spoke of Council wanting to draw more businesses into town but cautioned that no business is going to want to come to a town with a dump. She stated she does not want a dump and expressed her frustration. She noted correspondence to the Mayor and Councilmember's and lack of response. Dales stated that the citizen action is being done to save the City, their homes and kids.

Kevin Osborne – 1509 11th Place, addressed the smell from the garbage trucks especially in warm weather. He also suggested if this does not go through the City should consider rezoning the properties by the school.

Councilmember Galbraith – expressed concern with what the people are saying and noted the only action that Council has taken was the vote on the resolution back in May of 2007. He noted there are people on Council who are against Deluxe coming in and stated for the record that he has been against it since the get go. Galbraith state he knows schools having taught for 31 years and also knows that he is not alone with his feelings. He noted his reasons for being against it is that; 1) he has fought for the reputation of Sedro-Woolley and 2) he has concerns with transportation. He stated that he the believes people speaking are being unfair. He knows there's a permit process and everyone has the right to apply for a permit and when applied for within the right designation the Council cannot stop the process. Galbraith spoke of the 27 conditions on the permit and noted following the permit process the Council does not have the right to grant them the business, only the right to build a building. The County will have to approve the business as well as the Solid Waste Governance Board. Both entities have been straight forward and are against it. He noted as for the Council if they had the right to vote they would. He stated he has done a lot of soul searching but doesn't know a way to stop due process. If the Council tries to stop the due process they set themselves up for a civil suit and have been advised by several attorneys who specialize in land use and all advised if due

process is stopped the Council will be held accountable. He stated he believes come October 10th this will go away. He also stated that he takes personal pride in representing the City and wants the best for Sedro-Woolley. He hopes the public hears what he is saying and anyone who knows the permit process would not step in to stop the process. Galbraith stated he hopes the public hears their plight.

Councilmember Meamber – stated he concurs with Councilmember Galbraith’s comments and noted he has not been for the plan from the get go. He said he lives by Shell station on Hwy 20 and has to deal with fumes and exhaust and expressed his concern about the exhaust fumes for the High School. He also spoke of the use of back up beepers at the Ferndale plant when he visited and believes they would be a distraction to the students.

Mayor Anderson – stated for the record that the law case the Council is governed under is Mission Springs v. City of Spokane, 1998. Under this case the Council could be liable.

Loren Vaughn – 215 Ball St., again to the podium stated he understands the feelings of the Council but questioned if we are set to battle this the rest of our lives. He noted if the facility does not go through and the land comes back to the same designation this could be an ongoing concern and wondered if there was some way to rezone the property to be a more appropriate designation.

Mayor Anderson – noted there are pockets of industrial land around the City that could be faced with the same issues within neighborhoods and around schools. He noted he has requested the Planning Commission start now to review the industrial land locations for possible rezone or clarification of uses. Anderson encouraged the community members to go to the Planning Commission meetings and become involved in the process.

Planner Moore noted the Planning Commission meeting has recently brought up the subject of rezone and will be coming up with a priority list to work on. He also noted they intend to compare allowed uses within the zoning and will be looking at any that need to be clarified. Moore stated they appreciate public input regarding suggestions on changes or allowed uses and announced the Planning Commission meets the Third Tuesday of each Month at 6:30 P.M. However they are considering having additional meetings in order to cover the topic.

Councilmember Requa – addressed Mr. Vaughn’s statements and noted he hit upon some very important needs but believes the citizens are going about this wrong. They need to be involved from bottom up. The public needs to make known certain parcels and what uses would be acceptable. Requa stressed to go to meetings and make it known so the Planning Commission can make recommendations to Council and Council will act on it. Requa explained the process with the opportunity for numerous public hearings.

Discussion ensued to include public notification, paper of record, notification requirements and the open process since May, 2007.

Rick Judd – 1310 Fruitdale Road, community member and Planning Commission member noted that he has listened to the rumor mill and nobody has mentioned the previous tenant who wanted the land was the Janicki's. He also stated that nobody has addressed the fact that the land was industrial and people need to quit pointing fingers. Judd encouraged everyone to get involved.

Bonnie Dales – 411 Jameson, again to the podium agreed with Mr. Judd's comments. She noted her husband spoke out against the plan from the beginning and questioned rezoning at that time.

Discussion ensued regarding due process, issue of timing, Department of Ecology, contaminated property, location of the contamination, purchase of property by the School District, opinion of what a garbage dump is and young drivers with increased traffic.

Councilmember Galbraith – again spoke of the dilemma that the Council is in.

City Supervisor/Attorney Berg noted an article in the Courier Times regarding the environmental issues complete with graphics that was a good explanation. He also cautioned Council that the topic is under act of litigation and all the usual rules around that apply.

Kevin Osborne – spoke regarding the choice of legal paper and suggested consideration of another paper for choice of legal paper.

Discussion ensued of deliver of Courier Times versus Skagit Valley Herald.

Dennis O'Neil – 109 Talcott, addressed the last meeting and stated he has been attending Council meetings for four or five months and until the last meeting nobody ever shows up. He also addressed the Councilmembers and said they have to go out and get feedback from citizens. O'Neil addressed information in the paper being scanty and giving misdirected information and addressed the role of the Council to get things going which is quicker and more focused if it comes from the Council and Mayor. O'Neil addressed comments from Attorney Berg of March 19th regarding comments received from the public on the project stating Berg noted there were no comments that were not able to be addressed. O'Neil stated people were commenting but their comments were not being listened to. He addressed mitigation points being legally contested and the concern of law suits and questioned legislative immunity citing comments by LaConner's Councilmember Dan O'Donnell.

City Supervisor/Attorney Berg noted that legislative immunity not apply to quasi judicial matters. Legislative immunity would apply with policy setting and non-specific project decisions. He stated when Council is engaged in permit or project specific decision making that is considered quasi judicial decision making they are under a different set of rules. Berg also clarified his statement regarding references of quasi judicial process not the rezone process.

O'Neil also addressed the nuisance factor of businesses and establishments such as bars in the downtown area with little control of what can be done.

Mayor Anderson spoke of letting the process go its course upon the advice of outside counsel.

Discussion ensued regarding communications with the public and community group meetings.

Councilmember London encouraged citizens to look at how the city is zoned and if there is a concern to contact the Planning Department.

Sally Carlson – 335 Bennett, property owner who owns multiple properties within Sedro-Woolley encompassing most of the Council wards in the City addressed the Council noting she has a large invested interest in the community. She noted the Planning Commission meetings were not published in the paper and stated she was embarrassed by the headlines in the paper and indicated that she was one of the persons who signed the recall petition.

Steven O'Neil – addressed the Council not as a city resident but as a business owner of The Roost. He noted that opening a business in town was not a very enjoyable procedure but gave credit to the Planning Commission, Council and Mayor for making businesses more welcome in the community. He spoke of the permit process but agrees the need for looking at rezoning within area. He believes the process hit everybody between the eyes. He suggested publishing the meeting agenda in the paper and noted that he subscribes to both the Courier Times and Skagit Valley Herald and both papers don't agree all the time.

Discussion ensued regarding publishing the agenda, getting the newspapers to do their civic duty and televising the meetings.

Mayor Anderson addressed a recent newspaper article of allegations of certain City staff. He said he consulted with outside attorneys regarding conducting an internal investigation and noted that interviews were conducted regarding the allegations with 5 people who were in the room at the time of the alleged incident and upon completion of the internal investigation it exonerated the City Attorney of the allegations. Mayor Anderson expressed his disappointment with how the incident was handled by both the Skagit Valley Herald and the Skagit County Prosecutors office.

Annie Wilson – 816 Sterling St., addressed the Council and referenced a letter she received in 2000 regarding an application for welding shop within a residential area. She noted it was allowed to be put in and has had numerous problems since. Wilson also spoke of her grandfather donating 80 acres which is now Riverfront Park which was once a landfill and knows there was problem with rats and there will always be rats where there's a dump. She expressed concern for protecting the kids in school from such problems.

James Hawkings – 1211 State St., noted the easiest way to derail this is to get on the County to improve their operation.

Mary McGoffin – 268 Burrows Ln., addressed the Council and stated the confusion of the process began in May 2007 when Council was given the right to vote on the resolution. She noted from that point on the public believed the Council had the right to vote. She referenced the Spring Mission case in Spokane and noted that Council was liable because they overstepped their boundary. However, she also noted that the Mayor has the authority to withdraw the MDNS without liability to himself or the City. McGoffin respectfully requested the Mayor to seek outside legal counsel on this issue. She noted if the City were to withdraw the MDNS it would be the County and Janicki against Deluxe and they would be a better chance to win and having the hearing examiners decision overruled.

Councilmember Galbraith questioned where McGoffin received her information regarding the MDNS.

It was noted by McGoffin, Attorney Berg and Mayor Anderson that the information was in the court documents from the County available on the City website.

McGoffin encouraged all Councilmembers to seek independent legal counsel and to think for themselves.

Wesley Drake – Anacortes resident questioned the process and the type of concept for the recycle center.

Discussion ensued as to what the concept plans look like, public meetings on the concept, and a willingness to hold future meetings by Deluxe.

After discussion Drake addressed the council regarding his business, Boondocks Bar & Grill and the impact that the current construction project has had on the downtown businesses. He spoke of deleted parking spaces that went from limited parking to no parking.

Engineer Freiburger addressed the progress of the project noting there were some unforeseen difficulties and they plan to have Metcalf Street repaved by the weeks end. Freiburger expressed concern regarding his comments on the lack of communication because he noted he personally sent crews out with press releases regarding the schedule and apologized if he was missed and will be looking into why.

Discussion ensued regarding loss of business, compensation for downtown businesses for excess construction time and the contractor's work schedule.

Drake also addressed the cost of hook up fees for new fixtures which he is facing for a rest room remodel. He noted he feels with the loss of income he has already paid for the connection fees and questioned if the City Council can authorize a waiver of fees.

Mayor Anderson noted that the Council is not allowed to waive fees, that everyone has to be treated the same. He said the rates can be reviewed should the Council wish to.

Drake also requested consideration be given to the downtown area in project planning.

Kevin Osborne – 1509 11th Place, questioned if there was a liquidated damages clause with in the contract and questioned what will happen to those funds.

Attorney Berg noted that would be presuming liquidated damages will be paid and explained the theory behind liquidated damages.

Councilmember Lemley recused himself for the remainder of the meeting due to unforeseen attention needed at his business. Councilmember Lemley left the meeting at 8:40 p.m.

NEW BUSINESS

Resolution – Plat of Rene Estates (a 15-lot Subdivision)

Councilmember Requa recused himself due to a conflict of interest and left the Council bench at 8:40 P.M.

Planner Moore reviewed information for the Plat of Rene Estates, a 15-lot subdivision located at North Reed Street. The proposed plat has been reviewed by staff and the Hearing Examiner. Moore addressed items to note regarding the filling and relocation of a small low class wetland that was done with the Army Corps of Engineers approval and process and the second item of note was a result of public input which discussed local areas of surface water ponding. Moore stated that measures were taken to rectify concerns within the design of the plat and recommended approval.

Discussion ensued regarding public comments for street lights. It was noted the project itself was not large enough to warrant offsite improvements. Engineer Freiburger reviewed plans within the transportation plan and the impact fees that would be collected from the project that would build towards a light sometime in the future.

Councilmember Meamber moved to approve Resolution #770-08 A Resolution Granting Preliminary Approval for the Plat of Rene Estates, A 15-Lot Subdivision and Authorizing the Mayor and His Designee(s) to Sign All the Preliminary Plat Approval Documents. Councilmember Splane seconded. Motion carried (5-0, Councilmembers Lemley and Requa recused).

Resolution – Plat of Donovan Place (a 6-lot Subdivision)

Councilmember Requa rejoined the Council bench at 8:50 P.M.

Planner Moore reviewed information for the plat of Donovan Place, a 6-lot subdivision located at 324 Sapp Road. Moore reviewed items of note which included a small wetland that was mitigated by designating a separate tract to protect the area. The Hearing Examiner also required the applicant to explain the drainage runoff and how it will protect the surrounding properties. The recommendation is for approval.

Councilmember Splane moved to approve Resolution #771-08 A Resolution Granting Preliminary Approval for the Plat of Donovan Place, A 6-Lot Subdivision and Authorizing the Mayor and His Designee(s) to Sign All Preliminary Plat Approval Documents. Seconded by Councilmember Colgan. Motion carried (6-0, Councilmember Lemley recused).

Resolution – Plat of Zoey's Place (an 8-lot Subdivision)

Planner Moore reviewed the plat of Zoey's Place an 8-lot Subdivision located on Garden of Eden Road. He noted there were comments suggesting an alternate layout however there was not room for the alternate layout to fit. There were also comments which expressed concern for some fencing and concerns of site drainage. It was noted that the applicant will be required to install fencing and a curtain drain to alleviate these concerns. The plat was recommended for approval.

Councilmember Galbraith moved to approve Resolution #772-08 A Resolution Granting Preliminary Approval for the Plat of Zoey's Place, An 8-Lot Subdivision and Authorizing the Mayor and His Designee(s) to Sign All Preliminary Plat Approval Documents. Seconded by Councilmember Splane.

Attorney Berg questioned if there had been a check for appearance of fairness issues.

Councilmember Meamber noted he was at the Planning Commission when the plat was heard by the Hearing Examiner.

Discussion ensued regarding proposed expansion plans within the area for road improvements, status of the area plan and homeowners associations.

Dorothy DeFremery – 316 Garden of Eden, noted she had submitted a letter regarding the fencing but after more thought other things came to mind. She noted there is a lot of development in neighborhood and there are play areas addressed for small children ages 3-5 years old, she would like to see some space provided for older aged children. She stated if this development can't provide the space perhaps as other developments come along shared space could be considered. It was also her hope that the fencing be built to higher standards and she would like to have input regarding how it's stained.

Councilmember Requa addressed park impact fees and the location of the development in conjunction with Bingham Park and the Parks Departments plans to implement a recreational program.

Motion carried. (6-0, Councilmember Lemley recused).

City Hall Update – Resolution and Ordinance for Final Acceptance & GO Bond

Finance Director Nelson reviewed information for final acceptance and financing for City Hall. She stated she has been working with K&L Gates in preparing the final documents and reviewed the procedures for acceptance according to USDA requirements. Nelson noted that the interest rate is 4.125% with a 40 year payback. She noted the disbursement will be done in two parts, the first will be the pay off of the interim financing to Peoples Bank and the balance is the retainage which will be held for up to 1 year. She reminded Council that the Cell phone utility tax will go towards payment of the loan for City Hall. Nelson requested Council pass the ordinance and resolution to proceed with the closing of City Hall.

Councilmember Meamber moved to pass Resolution #773-08 A Resolution of the City of Sedro-Woolley, Washington, Accepting the Addition to the City's Municipal Building as Complete. Councilmember Requa seconded. Motion carried (6-0, Councilmember Lemley recused)

Councilmember Galbraith moved to adopt Ordinance #1619-08 An Ordinance of the City Council of the City of Sedro-Woolley, Washington, Authorizing a Limited Tax General Obligation Bond in the Principal Sum of \$2,925,000 for the Purpose of Financing the Acquisition of a Building to be Used as a City Hall; Providing the Terms of the Bond; and Providing for the Sale of the Bond to the United States Department of Agriculture, Rural Development. Seconded by Councilmember Splane. Motion carried (6-0, Councilmember Lemley recused).

COMMITTEE REPORTS AND REPORTS FROM OFFICERS

Police Chief Wood – announced the new Police Officer, Matt Vollans will start with the Department September 2nd and will start the Police Academy on September 15th.

Fire Chief Klinger – announced the Skagit County Fire Marshall is modifying the burn ban for recreational fires as of 8:00 AM tomorrow morning. He also noted beginning September 2nd they will be lifting the burn ban totally throughout the county but reminded everyone that there is no burning in the City Limits of Sedro-Woolley in accordance with the State regulations.

Engineer Freiburger – presented additional information on the Metcalf Street Sewer project. He also noted that they are ready to submit a grant application to the Transportation Improvement Board (TIB) for the SR9/Jameson arterial extension project.

He requested Council authorize the Mayor to write a letter of commitment for \$100,000 for the local match which will come from impact fees. The grant is due August 31st.

Councilmember London moved to authorize the Mayor to sign a letter of support to TIB supporting the SR9/Jameson Intersection project pledging \$100,000 from the arterial fund as our match. Seconded by Councilmember Galbraith. Motion carried (6-0)

City Supervisor/Attorney Berg – noted he placed at the Council desks correspondence received from the County Prosecutors office since the last meeting. Berg also announced that he has withdrawn as the attorney in the Deluxe LUPA matter noting that although it's not necessary for him to do, it seemed prudent to do. Berg stated that the County Prosecutor's office through e-mails and correspondence has made allegations of him not giving Council all the facts, giving bad legal advice and have tried to personalize it against him. He noted he believes in the process and that it's about the law and the facts, that's what Judges do and that's what lawyers are supposed to do and feels the best way to keep the focus on the law and facts is to remove the temptation to personalize the process and for that reason he is withdrawing from active representation. Mr. Carmichael will be taking over as lead counsel and the Mayor will be working directly with him. Berg reemphasized that the only reason he is withdrawing as counsel is because he has become a distraction because that's what Will Honea wants him to be. Berg noted he does not want to derail the process, he believes in the process and the judge will do what he needs to do with the law and the facts.

Finance Director Nelson –stated the audit team is wrapping up and should be completed by weeks end. She noted that things are going well and the exit conference is scheduled for September 3rd at 10 AM. Nelson requested an indication of who would be attending to avoid conflicts. Councilmembers Splane and London both indicated their plan to attend.

Councilmember Colgan – questioned Eron regarding compensation for businesses within contracts that the City takes on.

Berg stated he will do research on this however he is not aware of any provisions for compensation.

Councilmember Galbraith – noted he would like to take a look at the fee schedule for the sewer and fixtures. Discussion ensued regarding the process for review of rates and fees.

Councilmember London – stated that he has been approached by businesses regarding the project on Metcalf Street and the lack of parking. He noted he had passed comments on to the Public Works Department who made efforts to keep the business owners informed. London apologized if anyone was missed in the communication effort.

EXECUTIVE SESSION

Mayor Anderson announced an Executive Session will be held for the purpose of real estate and personnel for approximately 30 minutes with a possible decision. The meeting adjourned at 9:30 PM.

Councilmember Requa recused himself during the Executive Session at 9:50 P.M. due to a conflict of interest and left the meeting.

Mayor Anderson recused himself during the Executive Session at 9:58 P.M. due to a conflict of interest and left the meeting.

Mayor Pro-Tem Meamber announced at 10:54 P.M. that Council will be continuing their Executive Session for another 15 minutes.

Councilmember Lemley rejoined the Council at 11:00 P.M.

The meeting was called back to order by Mayor Pro-Tem Meamber at 11:15 P.M.

Councilmember Lemley moved to approve the necessary expenses of defending in the judicial review process as defined in RCW 4.96.041 shall be paid by the City in an amount not to exceed \$10,000 without further review and approval of the City Council. Seconded by Councilmember Splane. Roll Call Vote: Councilmember London – Yes, Lemley – Yes, Galbraith – No, Colgan – Yes, Splane – Yes and Meamber – No. Motion carried (4-2).

Councilmember London moved to adjourn. Seconded by Councilmember Splane. Motion carried (6-0).

The meeting adjourned at 11:18 P.M.