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CITY OF SEDRO-WOOLLEY  
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Regular Meeting of the City Council  
February 22, 2012 – 7:00 P.M. –City Hall Council Chambers

ROLL CALL: Present: Mayor Mike Anderson, Councilmembers: Kevin Loy, Tony Splane, Tom Storrs, Keith Wagoner, Hugh Galbraith, Rick Lemley and Brett Sandström. Staff: Recorder Brue, Finance Director Nelson, City Supervisor/Attorney Berg, Engineer Freiberger (Late), Planner Moore, Fire Chief Klinger and Police Chief Wood. Special Counsel: Mike Tierney

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

Pledge of Allegiance

Consent Calendar

- Minutes from Previous Meeting
- Finance
  - Claim Checks #73834 to #73923 in the amount of \$445,052.22.
  - Payroll Checks #52395 to #52502 in the amount of \$193,630.96.
- Possible Contract Award – Automated Refuse Truck – Solid Waste Systems, Inc.
- Professional Services Agreements No. 2012-PS-01 through 09 for Miscellaneous On-Call Professional Services
- Re-appointment of Beverly Ringhouse and Dagni Cole to the Sedro-Woolley Library Board

Councilmember Storrs moved to approve the consent calendar Items A through E. Seconded by Councilmember Lemley. Motion carried (7-0).

Proclamation – Declaring 2012 as Year of the Girl and Celebrating 100 Years of Girl Scouting

Mayor Anderson read a proclamation declaring 2012 as the Year of the Girl and Celebrating 100 Years of Girl Scouting. The members of Troop 40781 and their Leaders came to the Council bench to be recognized. A round of applause was given for their accomplishments.

Sedro-Woolley Library Story Walk Presentation

Debra Peterson – Sedro Woolley Librarian and Chamber representative, Elizabeth Fernando presented information on the upcoming Story Walk on March 10<sup>th</sup> from 10 am to 4 pm. They noted that twenty four downtown businesses will be sponsoring a story time with celebrity readers. Story sessions will change every half-hour with new readers every hour. Peterson noted that readers are still needed. The event is free and for all

ages. Fernando noted that March is National Reading Month and spoke on the importance of reading. She complemented the efforts of Judi Johnson in spearheading the idea for the event. It was also noted that as part of the story walk, quilts will be on display at various businesses. Peterson left bookmarks and posters for anyone interested in taking one.

#### Appeal of Hearing Examiner's Decision on CUP-1-11/Tom Swett

City Supervisor/Attorney Berg noted the presence of Attorney Mike Tierney who will be special counsel to the Mayor and Council regarding the process of the closed record hearing. Berg noted the appeal comes at a time with unsettled law both state and federal conflicts related to marijuana/cannabis issues. He also noted it comes with the threat of litigation from multiple parties. He reviewed the procedures for the appeal which is limited by code as to what can be given to Council. No public testimony is allowed.

Special Counsel Mike Tierney addressed the appearance of fairness doctrine and noted the hearing is a quasi judicial hearing which is limited to what is on the record. Each Councilmember was polled as to what information they may have received outside the record and whether they can exclude any information from their decision making.

City Supervisor/Attorney Berg questioned if there was anyone who wished to challenge any of the Councilmembers on the appearance of fairness. Hearing none, the process continued. Berg reviewed information of the record which has been available on the website.

Planner Moore reviewed the Council memo regarding the appeal of CUP 1-11. He noted the Sedro-Woolley Municipal Code requires the City Council to hear all appeals of a hearing examiner's decision to affirm, deny, modify or remand the decision. Moore also presented a progress of the review up to the appeal and reviewed the closed record appeal process. Moore emphasized that no public hearing or new or additional evidence shall be accepted by Council. Should Council determine that additional evidence is required the Council should remand the matter to the Examiner for reconsideration and receipt of additional evidence. It was stated the record before Council is identical to that reviewed by the hearing examiner. He noted the Council has a complete record of allowed information with four possible actions: 1) Find that no substantial error in fact or law exists and move to **affirm and uphold the hearing examiner's decision** and authorize the Mayor to sign Findings of Fact; 2) Find that no substantial error in fact or law exists but move to **modify the hearing examiner's decision** and authorize the Mayor to sign Findings of Fact; 3) Find that a substantial error in fact or law exists and move to **reverse the hearing examiner's decision** and authorize the Mayor to sign Finding of Fact; or 4) Find that the additional evidence is required and move to **remand the matter back to the examiner** for reconsideration and receipt of additional evidence and authorize the Mayor to Sign Findings of Fact.

Planner Moore summarized the original project application which was made by Thomas and Jean Swett for a conditional use permit at 1230 Warner Street which is the current

site of A-1 Mini Storage. The application requested a modification to the use to convert from a standard mini storage facility to an indoor cultivation of cannabis. He noted there had been two previous conditional use permits which was for the original mini storage and a modification. Some of the storage units have been converted already, when the City identified and finding it was a change in the previous approval requested the application be submitted for public review. Some of the application materials were received in July 2011 with final application items received in October 2011. It was then scheduled for the Hearing Examiner to review the application for the modification and determine whether it meets certain criteria within the code for approval or denial of the CUP. Moore reviewed the three main items necessary; 1) conforms to the Comprehensive Plan and causes no adverse impacts; 2) is compatible with the surrounding area and 3) is well planned in all aspects to be an asset to the community. The applicant presented his information for review and the Hearing Examiner upon reviewing, denied the application due to identifying additional impacts over and above what the hearing examiner approved prior. The applicant submitted a reconsideration memo clarifying some of the information in the original application with the main item being the amount of traffic trips. The hearing examiner issued a decision on the reconsideration to approve the application upon further review.

The appeal was then turned over to the Council for deliberation.

Councilmember Galbraith requested the definition of Low Intensity Agriculture be read into the record.

City Supervisor/Attorney Berg read the definition as requested by Councilmember Galbraith. "Low Intensity Agriculture as defined in Title 17 has the following, "Low Intensity Agriculture means the production, raising or keeping of any form of crops, ornamental plants or animals; provided, that any animal, excluding household pets such as dogs and cats, such as horses, cattle, hogs, pigs, goats, sheep, bovine animals, chickens, fowl or any other animals, poultry or fowl, shall not be raised, kept or maintained on a lot or ownership of less than forty thousand square feet, except as permitted under Chapter 6.20".

Councilmember Wagoner questioned if there was a definition of high intensity agriculture.

Berg stated he was not aware of a definition of high intensity within the code.

Council discussion and deliberation ensued including: confusion as to how the transition from the idea of storage to the idea of low intensity agriculture occurred, description on how to produce marijuana on pg. 223 of the record, steps involved for production being a high level of expertise necessary not translating to low intensity. Low level ag being allowed in any residential area is a right which cannot be taken away and trying to understand what it has to do with a CUP and questioning the status of the residence on site of the applicant. Further discussion regarding low intensity vs. high intensity, traffic within the area supported in record by letters addressing character of traffic changes,

more attention of traffic on a daily basis to maintain product, cultivation profiles, proposal not being well planned, incomplete items from previous CUP, conflict with 2005 letter vs. incomplete items, references to pages 185 through 187 and compliance is an ever bearing issue, also asset to community question.

Councilmember Wagoner moved that a substantial error in fact or law exists and moved to reverse the hearing examiners decision and authorize the mayor to sign findings in fact. Councilmember Galbraith seconded.

Discussion ensued with clarification of why it is believed to be an error in fact.

Councilmember Wagoner noted he believed an error was made in making a leap from storage facility to low intensity agriculture, an error in believing it was an asset to the community as it affects the psychology of the people who live in the neighborhood based on the letter within the record, it affects property values and does not affect them in a positive way which is not an asset to the community and erred in computations for traffic, based on what is in the record.

A brief discussion took place on the appropriateness of returning it to the examiner for further study. Councilmember Wagoner stated he stood on his motion.

Councilmember Galbraith called for the question.

Motion carried (5-2) (Councilmember Loy and Splane opposed).

Public Comment

No public comment received.

## **PUBLIC HEARINGS**

### Moratorium on Permitting of Activities Involving Medical Marijuana

City Supervisor/Attorney Berg reviewed the moratorium on permitting of activities involving medical marijuana. He presented the history of a previous ordinance which expired and it was thought to have been resolved in legislative action. Berg noted there are still a number of conflicts between federal and state law. He also noted that the proposed ordinance would not apply to the current application in the appeal process. Under state law the City is allowed to implement the moratorium immediately upon passage but a public hearing is required to be held within 60 days. Staff is recommending adoption of proposed ordinance.

Mayor Anderson opened the public hearing at 7:53 P.M.

No comments received.

Mayor Anderson closed the public hearing at 7:54:30.

Councilmember Storrs moved to adopt Ordinance No. 1733-12 to adopt Findings of Fact and continue Ordinance No. 1728-11, a moratorium on permitting activities involving medical marijuana. Seconded by Councilmember Splane.

Discussion was held to clarify the time frame of the ordinance with the process to allow the Planning Commission time to review and develop codes.

Motion carried (7-0).

## **NEW BUSINESS**

### Proposed Comprehensive Plan Amendments – 2012 Docket

Planner Moore reviewed the proposed comprehensive plan 2012 docket to include 3 items as follows: 1) Review of a request to expand the urban growth area (UGA) to include three parcels just north of City Limits.; 2) Review and update the Housing Element of the Sedro-Woolley Comprehensive Plan and 3) Review of zoning in the area generally located south of SR20, and west of Rhodes Road. The request was requested by property owners for it to be reconsidered. Staff requests approval of proposed docket or any additions or deletions.

Discussion ensued regarding the process for the UGA request.

Councilmember Wagoner moved to approve the above items for inclusion on the 2012 Docket. Seconded by Councilmember Lemley. Motion carried (7-0).

### 2012 Closure Days

- Resolution – Rescinding Resolution #854-11
- Ordinance – Restoring the Mayor's Salary
- Approving an MOU with AFSCME

City Supervisor/Attorney Berg reviewed the closure of the year end 2011 with an excess of ending cash in an amount to restore the 2012 scheduled closure days. He presented three items for action. He did note that the Mayor's salary was cut in solidarity of the closure days and one of the actions would be to restore his salary accordingly.

Councilmember Storrs moved to adopt Resolution No. 858-12 rescinding Resolution No. 854-11. Seconded by Councilmember Splane. Motion carried (7-0).

Councilmember Lemley moved to approve Ordinance No. 1734-12 restoring the Mayor's salary. Seconded by Councilmember Storrs. Motion carried (7-0).

Councilmember Storrs moved to approve the MOU with AFSCME. Councilmember Lemley seconded. Motion carried (7-0).

## **COMMITTEE REPORTS AND REPORTS FROM OFFICERS**

Police Chief Wood – announced that Police Officer Musgrove will be leaving to take a position with the Chelan County Sherriff. Chief Wood noted Officer Musgrove has been a great asset to the staff. His last day will be February 29<sup>th</sup>. Chief Wood also announced the apprehension of three people which seem to be involved with the recent robberies throughout town. They have recovered property from 11 separate robberies. He did cautioned people to still be aware and watch for unusual activity. He reported on the Crime Watch Appreciation lunch which is funded through donations. At the luncheon they discussed increasing their duties with more daytime patrols.

Mayor Anderson commended the Police Department along with the Swinomish Tribe Police for their efforts in apprehending the robbery suspects. He noted he received several complimentary e-mails.

Engineer Freiberger – reported on a slight delay in getting signals up and running on Hwy 20. DOT decided an emergency preemption was necessary on the HAWK signal.

Mayor Anderson noted he received a compliment from Former Mount Vernon Mayor Bud Norris on the project.

City Supervisor/Attorney Berg – gave a reminder of an Executive Session to be held.

Councilmember Wagoner – questioned the drainage system along the project with all the recent rain.

Engineer Freiberger noted there is one spot at Central but overall it is working well.

Finance Director Nelson –reported in the Council packets are the internal December 2011 financial statements and noted it will be awhile before the official statement will be ready. She proudly announced the Standard and Poors rating for the general obligation (G/O Bond Debt) confirming the cities A+ rating as stable and stated they will be sending an official document. She reported the limiting factors to increasing the rating is the economic base of city and being a cash basis accounting which makes it more difficult to compare to GAAP accounting.

Councilmember Splane and Councilmember Lemley both gave compliments to the Police Department.

Councilmember Wagoner – reported on the Sedro-Woolley High School Girls Wrestling team winning their 4<sup>th</sup> consecutive state title.

Louis Requa – Skagit Surveyors and Engineers, – thanked the Council for the approval of the on-call services agreement within the consent calendar. He spoke of the downturn of

the economy which has caused lay offs for his company and expressed his appreciation for being awarded the on-call agreement.

City Supervisor/Attorney Berg thanked Skagit Surveyors and spoke of the benefit of having a local company to do business for the City.

### **EXECUTIVE SESSION**

The meeting adjourned to Executive Session at 8:21 P.M. for the purpose of Real Estate under RCW 42. 30.110(1)(b) for approximately 15 minutes.

The meeting reconvened at 8:42 P.M.

Councilmember Galbraith moved to adjourn. Seconded by Councilmember Lemley. Motion carried (7-0).

The meeting adjourned at 8:42 P.M.