
CITY OF SEDRO-WOOLLEY

Regular Meeting of the City Council
September 26, 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, Acting Planning Director Coleman, Fire Chief Klinger and Police Chief Wood.

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

Pledge of Allegiance

Consent Calendar

- Approval of Agenda
- Minutes from Previous Meeting
- Finance
 - Claim Checks #75225 to #75326 in the amount of \$622,593.71
 - Payroll Checks #53936 to #54046 in the amount of \$189,286.53 (Voided Check #54042)
- Professional Services Agreement – Wallace & Associates
- Skate Park
 - Ordinance 1751-12 – Prohibiting Smoking
 - Ordinance 1752-12 – Establishing Rules
- Amendment – 2012-PW-03 Aaction Excavating, Inc. On-Call Construction Services Contract Total and Task Order #3 Total

Councilmember Sandström requested to pull Item E – Skate Park from the consent calendar.

Councilmember Storrs moved to approve the consent calendar Items A through F, with E the exception. Seconded by Councilmember Splane. Motion carried (7-0).

Councilmember Sandström questioned the difference in the park hours between the Skate Board Park and other City parks. He stated that all parks should have equal hours.

City Supervisor/Attorney Berg reviewed the closing time for City parks is at 10:00 P.M. The proposed rules of the Skate Board Park is recommended for seasonal hours June 1st through September 15th 8:00 A.M. to 10:00 P.M. and September 16th to May 31st 8:00 A.M. to 8:00 P.M. Berg stated this was recommended out of deference to the neighbors.

Discussion ensued regarding respect of neighbors, closing hours of other parks, winter closing of the RV Park, most parks being in neighborhoods, change of hours for all parks,

Skate Board opening date and deadline approaching for signage, consistency of hours and code language.

Councilmember Sandström moved to approve Ordinance No. 1751-12 An Ordinance Prohibiting Smoking at the Skate Park. Seconded by Councilmember Lemley. Motion carried (7-0).

Councilmember Sandström moved to approve Ordinance No. 1752-12 An Ordinance Establishing Rules for the Skate Park with the elimination of P. Seconded by Councilmember Lemley.

Further discussion ensued regarding respect for neighbors, uniformity of hours, enforcement of the laws and consideration for extended hours for weekends.

Police Chief Wood addressed the Council regarding the operating hours of the Skate Board Park which he noted can be controlled with lights. He requested consideration of longer operating hours on weekends.

Motion failed (3-4 Councilmember Splane, Storrs, Wagoner and Galbraith opposed).

More discussion ensued regarding extended hours for weekends and closure subject to abuse or misconduct.

Councilmember Lemley moved to adopt Ordinance No. 1752-12 An Ordinance Establishing Rules for the Skate Park with the change to P as stated by the City Attorney Seconded by Councilmember Wagoner. Motion carried (6-1 Councilmember Sandström opposed).

Proposed Language as stated by City Supervisor/Attorney Berg:

["Skate Park is closed to any and all users from 10 P.M. to 8 A. M. from June 1st to October 15th and Friday and Saturday year round, from October 16th to May 31st the Skate Park is closed from 8 P.M. to 8 A.M. Monday through Thursday"].

Public Comment

No Public Comment

UNFINISHED BUSINESS

CUP-1-11 Closed Record Appeal *(please refer to audio recording for the full detail of the hearing)*

Mayor Anderson stated the agenda item is a closed record appeal of CUP-1-11 in the matter of the appeals of the hearing examiner's decision on reconsideration from January 19, 2012. Presentations were heard in the following order:

Procedural Background from the City Attorney;
The Planning Department's recommendation from Acting Planning Director
Coleman; and
Discussion by the full Council.

Mayor Anderson noted the Council is setting in its quasi-judicial capacity, as judges reviewing the decision of the hearing examiner and making a decision on the appeals filed by Reverend Coursen and Mr. Shewmaker. The decision shall be based solely upon the evidence and testimony in the record.

City Supervisor/Attorney Berg questioned the Council and the Mayor with appearance of fairness questions as follows:

- a). Does any member of the council have knowledge of having conducted business with either the proponents or the opponents in this proceeding?
- b). Does any member of the council have either a pecuniary or non-pecuniary interest in the outcome of this proceeding?
- c). Does any member of the council know whether or not his/her employer has a financial interest in this matter, or has an interest in the outcome of this proceeding?
- d). Does any member of the council live or own property within 300 feet of the area which is the subject of this proceeding?
- e). Does any member of the council have any special knowledge of the substance or merits of this proceeding which would or could cause the Board member or prejudice the outcome of this proceeding?
- f). Is there a member of the council who believes that he cannot sit and hear this matter fairly and impartially, both as to the respective positions of the proponents and the opponents in this proceeding?

Councilmember Lemley disclosed that he had at one time rented a storage locker at the site and he lived within the neighborhood of the subject property.

Councilmember Loy disclosed that he had visited the site.

All other Councilmembers and the Mayor answered NO to all questions.

Mayor Anderson then asked if there were any members of the audience who, because of the appearance of fairness doctrine wished to disqualify any member from hearing the matter at hand. There was no response from the audience.

City Supervisor/Attorney Berg reviewed the procedural history, this issues before the Council and the role and responsibility of the Council. He stated the appeals filed were interpreted by the judge and reviewed the judge's order. He spoke of the importance of any references must be within the record. Per the judge's order the only questions under consideration from the Council are:

- 1). Whether the proposed marijuana gardening is “low intensity agriculture,” and;
- 2). Whether the proposed use would be an asset to the community.

City Supervisor/Attorney Berg stated there are four possible actions available to the Council.

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** (describe modification) 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 Findings of Fact.
4. Find that 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.

City Supervisor/Attorney Berg reviewed the issues before the Council reminding them that any decision must be supported by the record and that the burden of proof is on the appellants, not the applicant. He also stated Council is limited to what can be considered as set by the Judge.

Acting Planning Director Coleman presented information regarding the original Planning Department recommendation, the Hearing Examiner’s original decision, the request for reconsideration by the applicant and revised Hearing Examiner’s decision and the two issues to be considered raised by the appeals. The recommendation by the Planning Department focuses on whether the proposed use would be an asset to the community. Coleman cited numerous statements within the record and noted the Planning Department’s recommendation is that the evidence does not support the Hearing Examiner’s finding that the proposal is an asset to the community and the approval be reversed.

City Supervisor/Attorney Berg noted the Planning Department’s recommendation is to be given no greater weight than anything else in the record. Berg also stated he missed reporting in the procedural list an issue raised at Judge Cook’s level was that the applicant was denied an opportunity to respond to the appeals because the appeals were vague. After the Judge defined the scope of the appeals, we went through the code and reset the process at the point where the applicant had an opportunity to comment on the appeals. Notice was given to the applicant. He also noted there are a number of lined out information based on legal advice that the information was not allowable at this stage of the process. Redacted information is believed to be new facts. He noted also a letter for Attorney Pat Hayden redacted as untimely.

Mayor Anderson turned the hearing over to the Council for discussion with a final reminder that the appeals are limited and any decisions of the Council must be based

solely upon the record. He requested Council reference specific pages of the record for the record of the deliberations.

A healthy discussion and debate by all Councilmembers ensued with the focus being whether the proposed use would be an asset to the community [*full detail available in audio format*].

Councilmember Wagoner moved to reverse the decision of the hearing examiner in CUP-1-11 and to task staff with preparing findings and conclusions consistent with our decision for our review at the next meeting. Councilmember Galbraith seconded.

Further discussion was held by the Council regarding the contents of the Conditional Use Permit application.

Mayor Anderson restated the motion. City Supervisor/Attorney Berg noted that the motion made by Councilmember Wagoner was slightly different than the motion articulated by the Mayor.

The motion by Councilmember Wagoner included acceptance of the staff recommendation.

Motion carried (6-1 Councilmember Loy opposed).

COMMITTEE REPORTS AND REPORTS FROM OFFICERS

Police Chief Wood – reported the Police Department continues to be busy targeting low level drug houses in town. They have been very effective and are making a great difference.

City Supervisor/Attorney Berg – reported being close to selling more of the drug forfeiture property, including the mobile home. Berg also reported on behalf of Engineer Freiberger about a surplussed flatbed pick up truck out of the cemetery that was used in the winters as a small plow and sanding truck. The flatbed had a number of safety and mechanical defects and was scrapped instead of sold which puts us down one snow removal vehicles. A recommendation to Council is being requested to utilize the ERR fund to purchase equipment for one of the 5-7 yard dump trucks in the Waste Water Treatment Plant. The purchase would be identical gear to the one in the Street department and would give the City two fully equipped, full size plow/sander combination rigs. The purchase would be from North End Truck for a state DOT spec, state contract pricing for a V-Hopper Sander body with an 11 foot Hopper, Top Screens and all the gear. The total cost is \$27,716.00 plus sales tax. Berg noted there are sufficient funds in the ERR fund and it is believed to be prudent to order the equipment right away in order to have it in our inventory in case there is a snowstorm and to be able to continue to offer the best level of service possible.

Councilmember Storrs moved to approve the purchase of snow removal equipment for the truck at the Sewer plant. Councilmember Lemley seconded.

Discussion ensued on the purchase price, the purpose of the ERR Fund and possible use of the equipment from the surplussed vehicle.

Motion carried (7-0).

City Supervisor/Attorney Berg reported on an upcoming tour of the SCORE Jail facility in South King County. He noted the facility is a multi-jurisdictional misdemeanor jail facility.

Finance Director Nelson – reported working on the 2013 budget with all department requests having been received. She also stated the State Auditors have arrived. They will be sending all Councilmember's an invitation to the entrance conference scheduled for Monday, October 1st at 8:30 A.M. She requested Councilmember's notify her if they plan on attending.

Councilmember Storrs – made reference to the downtown street project.

Councilmember Sandström – commented on the Envision 2016 decision made by Council. He spoke of the unfair process for public input as noted by a member of the Planning Commission.

Some discussion ensued on the process.

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

The meeting adjourned at 9:20 P.M.