

MINUTES OF THE PROCEEDINGS OF THE CITY COUNCIL

March 7, 2006

The minutes of the proceedings of a regular meeting of the City Council of the City of Coos Bay, Coos County, Oregon, held at 7 p.m. in the Council Chambers at City Hall, 500 Central Avenue, Coos Bay, Oregon.

Those Attending

Those present were Mayor Joe Benetti and Councilors Jon Eck, Roger Gould, Jeff McKeown, and John Muenchrath. Councilors Cindi Miller and Kevin Stufflebean were absent. City staff present were City Manager Scott McClure, Deputy Recorder Joyce Jansen, City Attorney Nate McClintock, Planning Administrator Laura Barron, Fire Chief Stan Gibson, Library Director Carol Ventgen, and Police Capt. Rodger Craddock.

Flag Salute

Mayor Benetti opened the meeting and led the assembly in the salute to the flag.

Consent Calendar

Mayor Benetti reviewed the consent calendar which consisted of approval of adoption of Resolution 06-05 supporting inclusion of the Oregon International Port of Coos Bay as a sponsor of the Bay Area Enterprise Zone, adoption of Resolution 06-06 approving application for Electronic Zone status for the Bay Area Enterprise Zone, initiation of vacation of a portion of H Street west of Sixth Avenue (Eastern area); and approval of the February 7, 2006 minutes. Councilor Eck moved to approve the consent calendar as presented. Councilor McKeown seconded the motion which passed with the Mayor and all Councilors present voting aye.

Presentation by the Empire Waterfront Concept Plan Committee

Gary Haliski, Chair of Empire Waterfront Concept Plan Committee, briefly reviewed the formation and task of the committee. The first meeting of the committee was November 17th and much of the ground work had been done by the Concerned Citizens of Empire. The goal of the plan is to preserve the history of the area, provide access to the water, and revitalize the Empire area. Mr. Haliski thanked the Empire citizens for their work on the plan and staff members Laura Barron and Steve Doty providing information and maps. He commented Hilary Baker was asked to prepare drawings of the plan. Ms. Baker reported the drawings are conceptual allowing other issues to be addressed in the future. She reviewed the drawings which included an overview of the site, a view from Newmark of the upper pullout area, a view of retail, restaurant, public space, the dock and bay access, and the boat dock.

Councilor McKeown expressed appreciation to committee members for developing the plan and drawings, and commented the flexibility of the plan is important. Mayor Benetti also expressed support for the concept plan. Tom Greaves, Mill Street, stated he liked the building designs and is in favor of the plan; however, the plan would obstruct his view, and he requested the Council take into consideration the view from his property. Steve Skinner thanked everyone who worked on the project. He explained the design would include the history of the site using

interpretive signs, and the tower structure represents part of the area's history. Mr. Skinner commented Capt. Magree was a ship pilot and had a tower in this area to watch for ships entering the bay. Mayor Benetti thanked everyone for their work on the concept plan and recommended the city move forward with the plan.

Report from the Citizens for Bay Area Youth (C-BAY) by Cathi Thompson

Brian Menten, representing C-BAY, reported C-BAY met with the Parks Commission regarding the expansion of the skateboard park located in Mingus Park and the commission recommended removal of the tennis court, basketball court, and horse shoe pit. Mr. Menton explained the location was chosen because of its size, the central location, and its closeness to downtown businesses. Mr. Menton commented Oregon has more free skateboard parks than any other state and most were built with grant funds. Tara Cartright, 151 North 8th Street, commented the location is very important for the skateboard park, and availability of a challenging park will attract locals and visitors.

Councilor McKeown inquired if there were skateboard related businesses in the area and Mr. Menton commented there are four. There was further discussion on parks located in Oregon, attendance at the competitions, design features of skateboard parks, and how the skateboarders work with the softball field users. Councilor Gould expressed concern about eliminating the tennis and basketball courts and recommended the city work at finding another location for the skateboard park, perhaps relocating the kiddie section in Mingus. Councilor Eck commented the tennis court is difficult to maintain due to water and staff recommended removing the courts. Councilor Muenchrath expressed support for developing the park in its current location. Greg Mulkey, Athletic Director for Coos Bay Schools, reported the schools use the tennis courts and could use more tennis facilities, although he supports the skateboard park, he doesn't want to lose the tennis courts. Mr. Mulkey commented the post office is located on a previous tennis facility and Sunset School eliminated their tennis facility. Councilor Eck stated the Parks Commission does not want to lose the tennis facilities, but perhaps relocate them to another park such as Eastside Park.

Councilor McKeown asked if the courts were within the urban renewal district and Mr. McClure reported they were not. Mr. McClure reported the Parks Commission recommendation will be on the agenda for the next Council meeting. Atigun Moore commented the City of Powers is in the process of building a skateboard park and he would like to see Coos Bay have a bigger park. Mike Vaughan commented the tennis courts should be within walking distance of the high school and suggested the city consider the property on Lockhart Avenue. Kevin Solora, high school tennis coach, commented students use the Mingus courts and it is not an either or thing, both groups deserve to have their facilities. Ian Carol expressed support for the skate board park, but not the removal of the tennis courts. Theresa Sherwood, North Bend, commented skate boarding is the future and she supported locating the skate park in Mingus Park.

Mayor Benetti thanked everyone for their comments and commended the group for moving forward with plans for a skate board park. The Council will hear the Planning Commission's report at the March 21st meeting.

Public Hearing on the Proposed Street Vacation of the East 20 Feet of North 8th Street North of Pine Avenue

Planning Administrator Laura Barron read the public hearing disclosure to the assembly and reported on February 14th the Planning Commission unanimously recommended approval of the vacation of the east 10' of North 8th Street right of way for a distance of 300'. Mr. James Cahill is the applicant and has requested the vacation to allow for another structure to be built. Ms. Barron reported the Commission approved the vacation with two conditions; the structure shall not impede installation, repair or maintenance of a utility, and an easement must be granted to Verizon for their facilities affected by the vacation.

Mayor Benetti opened the public hearing. Rick Shearer, 2155 North 11th Street, commented he lives in this area and Redwood Avenue is the only access. The neighbors recently cleaned up the area and after talking with Mr. Cahill about maintaining the landscaping, he supports the vacation request. There were no further comments and Mayor Benetti closed the hearing. Councilor McKeown commented requiring landscaping was a reasonable request. Councilor Gould moved to adopt the Planning Commission's finding and enact Ordinance No. 380. Councilor Eck seconded the motion. Councilor Gould amended his motion to include a requirement for landscaping, and Councilor Eck amended his second. Deputy Recorder Joyce Jansen read the ordinance by title only. Ordinance No. 380, an ordinance providing for the vacation of a portion of North 8th Street, was enacted by the following vote:

Aye:	Mayor Benetti and Councilors Eck, Gould, McKeown, and Muenchrath
No:	None
Absent:	Councilors Miller and Stufflebean

Public Hearing on the Confederated Tribes' Appeal of a Variance to the 35 Foot Height Limitation in Order to Site a Cell Tower for Edge Wireless (ZON2005-00037)

Planning Administrator Laura Barron read the public hearing disclosure to the assembly and reported on July 12, 2005 the Planning Commission approved a variance to the 35' height limitation to allow the 120' communication tower with the following conditions: (1) all Federal Aviation Administration regulations must be met; and (2) the proposed facility, and any future carriers to be collocated on the facility, must comply with all regulations, including but not limited to those concerning radio frequency emissions, by the Federal Communications Commission. Ms. Barron reviewed the area on Radar Road and Fulton for location of the proposed tower. On July 28, 2005 the Department of Community Services received a letter of intent to appeal from the Confederated Tribes. Ms. Barron reported the Tribes' property borders the property the tower is to be located, and since July, continuances have been granted to allow time to work out a resolution. The appellant stated in the letter of intent that their interests are directly and negatively affected by the Planning Commission's decision. Ms. Barron explained the City Council may affirm the Planning Commission's decision, reverse, or deny the variance; or the Council may remand the decision back to the Commission. Ms. Barron reviewed Council action required prior to opening the public hearing. Councilor Muenchrath moved the appeal was filed in a timely manner. Councilor McKeown seconded the motion which passed with the Mayor and all Councilors present voting aye. Councilor Gould moved to find the appellant has standing to

appeal. Councilor Eck seconded the motion which passed with the Mayor and all Councilors present voting aye. Mayor Benetti opened the public hearing. Vicki Sieber-Benson, Deputy Tribal Attorney, commented the issue presented by the appeal is that the Planning Commission erred that the applicant met condition #3 of no negative impact. In coming to their conclusion, the Commission made findings 3e proposed use, no increase in traffic or changes in use of property not anticipated, and 3g adverse physical affect does not go far enough. Ms. Sieber-Benson reported the Tribe submitted testimony a changed use is anticipated for the property. The cell tower with blinking lights would potentially stop the planned elder house and cultural center. She further commented the conditional use permit criteria and height variance criteria requires finding no negative effect on the use of the property. Ms. Sieber-Benson commented the Tribes submit that the use of the phrase negative effect is broader than physical affect, and there was substantial discussion by the Planning Commission on the physical and negative affect on use of the property. Physical does not apply to height variance. Ms. Sieber-Benson commented the Planning Commission applied inappropriate criteria and the Tribes is asking that structures no higher than 35' be allowed. The proposed tower would have a significant impact on elder housing residents and would make the site unusable. Ms. Sieber-Benson asked the City Council to find that criteria #3 is not supported and to deny the variance.

Councilor Muenchrath inquired about the location of the tower in relation to the housing. Ms. Sieber-Benson reported the base of the tower would be approximately ten feet away and is 120' high with blinking lights. She further commented the Tribes worked with Edge Wireless on finding another location; however, they were not able to reach a solution. Councilor Eck asked about moving the tower behind the water tank and Ms. Sieber-Benson commented that would place the tank between the tower and the property. Councilor Gould commented the language of the ordinance is not viewed from what we think of impact on property, and the property owner has a right to enjoy their property. If a reasonable basis is put forward that the use negatively affects the use of the property, we must look at it from the property owner's point of view. Councilor Gould commented the Tribes' comments are reasonable and he supported reversing the Planning Commission's decision.

Bruce Parrot, representing Edge Wireless, asked the Council to affirm the decision of the Planning Commission for the variance for the proposed cell tower. He submitted a photograph of the area proposed for the cell tower. The variance was granted for a 120' tower, close to the Tribes' property. Since that time, Edge Wireless has met many times with the Tribes and were unable to reach an agreement. Mr. Parrot reported Edge Wireless has an agreement with the Coos Bay-North Bend Water Board to locate the tower on the lower portion of the property which would be further away from the Tribes' property. He also noted that the FAA does require the tower to be lighted; it would be striped and marked with two steady red lights, but no flashing lights. The Water Board has consented to locating the tower behind the water tank which is over 200' away from the Tribes' property.

Ms. Barron explained the original proposal was for the upper corner of the property and one of the conditions was to move the tower southeast as far as possible. Mr. Parrott commented this location is at a lower elevation and the tower would be 30' shorter. It is an unmanned facility, with no flashing lights, and requires one site visit per month. Mr. Parrott commented two of the three criteria are required to be met and Edge Wireless has complied with this requirement. He requested the City Council affirm the Planning Commission's decision.

Howard Crombie, Tribal Environmental Coordinator, reported this is the location the Tribes filed the appeal on and their concerns were not alleviated by the new location. The overall height still obstructs the view and the top of the structure is at the same elevation originally proposed. Mr. Crombie commented many of the trees will be removed when the new water tank is constructed and the cell tower will still impact the Tribes' property.

Councilor Gould commented the Planning Commission found criteria #1 did exist, criteria #2 did not exist, and criteria #3 the variance will not negatively affect abutting property; so the Commission found in favor of #1 and #3. If the Council finds #3 does not apply now, then they are down to meeting one of the criteria. Mr. Parrot reported findings met #1 and #3. Ms. Sieber-Benson commented one of the Planning Commission's conditions was the tower would not be painted red and white stripes, and it would need to have flashing lights. Mr. Parrott commented the Tribes took exception to criteria #3 and he would take exception to the findings on criteria #2. Mr. Crombie commented that in looking at the photograph, the tallest trees would have an affect on the tower and would have to be removed. He further commented they had considered other locations for the tower, including on top of the Tribal administration building, but couldn't get enough height. Anella Loomis, Coos Bay, stated she did not support locating the tower in this area. There being no further public comments, Mayor Benetti closed the public hearing.

Councilor Gould stated the tower does not bother him, but it is not relevant to the case before the Council. The Council's job is to determine if the stated basis is reasonable or not. Councilor McKeown commented the existing zoning allows for a 35' tower; a 120' tower physically impacts use of the property and is a negative impact. Councilor Eck agreed the Planning Commission's decision should be overturned. Councilor Gould moved to deny the variance. Mayor Benetti seconded the motion which passed with Mayor Benetti and Councilors Eck, Gould, McKeown, and Muenchrath voting aye. Councilors Miller and Stufflebean were absent.

Review of the Planning Commission's Interpretation of the Land Development Ordinance Regarding a Request to Locate a Law Office in the Medical Park Zoning District

Planning Administrator Laura Barron reported the February 14, 2006 Planning Commission interpretation of the ordinance regarding the request from Dr. Whiting was that the proposed law office did not meet the intent of the Medical Park zoning. The proposed property is located on Woodland and Thompson Road. Ms. Barron briefly reviewed medical park zoning language and the objective of a medical park district in the Comprehensive Plan. The Planning Commission had expressed concern about allowing a law office in the medical park district. Ms. Barron explained the applicant does have the option of applying for a rezone.

Dr. Ralph Whiting reported the building has been on the market for six months and he has a buyer who would like to use it for a law office. The ordinance states the zoning designation is to provide space for semi-public facilities needed to complement medical facilities, and the proposed law office is complementary. Dr. Whiting displayed a map showing six different zones in the area of his building and reviewed the other types of businesses in the area. The Commission's decision has required the purchaser to withdraw his office, and Dr. Whiting asked the Council to reconsider the decision.

City Attorney Nate McClintock commented there is a good argument for changing the zoning; the fact is the law office even though providing professional services, it is not a permissible use for Medical Park zoning. There was a brief discussion regarding uses in Medical Park zoning and the Council upheld the Planning Commission's decision.

Public Hearing on the Proposed Text Amendment to the Land Development Ordinance Regarding Fees for Appeals

Planning Administrator Laura Barron reported the Planning Commission reviewed the proposed addition of language to add a fee to offset costs of an appeal. The Planning Commission held a hearing on February 14, 2006 and recommend approval of the text amendment. Mayor Benetti opened the public hearing; no comments were given and the hearing was closed. Councilor Gould moved to enact Ordinance No. 381. Councilor McKeown seconded the motion. Deputy Recorder Joyce Jansen read the ordinance by title only. Ordinance No. 381, an ordinance amending Chapter 5.4 of Ordinance No. 93, the City of Coos Bay's Land Development Ordinance, was enacted by the following vote:

Aye:	Mayor Benetti and Councilors Gould, McKeown, and Muenchrath
No:	Councilor Eck
Absent:	Councilors Miller and Stufflebean

City Manager's Report

City Manager Scott McClure reviewed the status of the project list; the Central Dock project bid will be on the next agenda; a report on the fire station will be made at the next meeting; the vehicle schedule will be in the budget; the wastewater SDC will come to the Council in June; inspections have been done for the crossover agreement; and staff is working on the 2006/07 budget. Mr. McClure reported a liquid natural gas forum meeting will be Florence and information will be forwarded to the Council. Councilor McKeown reported Bob Braddock will be making a presentation at the next Chamber Forum.

Public Comments

Mike Vaughan, Coos Bay, commented several years ago he brought a concept for constructing a sidewalk at Timber Inn corner and has recently started preparing plans for the sidewalk. He would like to bring this item to the next Council meeting.

Council Comments

Councilor Eck reported the Parks Commission would like to have Gus Langley's name added to the Mayor's Appreciation plaque. Mayor Benetti said he would take care of adding Gus' name. Councilor Gould reported the Firefighter Memorial groundbreaking will take place at 6 p.m. on March 21st. The sculptor, Mack Holman, will be attending with a portion of the statue. Councilor Gould commented Crow/Clay has done a great job with preparing the specs for the project. Councilor McKeown reported recently he attended a meeting in opposition to the LNG facility.

Executive Session

An executive session was held pursuant to ORS 192.660 (2) (f) to consider information exempt from public inspection and (h) for the purpose of consulting with legal counsel regarding litigation likely to be filed. Council convened into regular session.

Adjourn

There being no further business to come before the Council, Mayor Benetti adjourned the meeting to March 21, 2006 in the Council Chambers at City Hall.

Joe Benetti, Mayor

Attest:

Joyce Jansen, Deputy Recorder