

MINUTES OF THE PROCEEDINGS OF THE CITY COUNCIL

June 26, 2018

The minutes of the proceedings of a special meeting of the City Council of the City of Coos Bay, Coos County, Oregon, held at 7:00 pm in the Council Chambers at City Hall, 500 Central Avenue, Coos Bay, Oregon.

Those Attending

Those present were Mayor Joe Benetti and Councilors Lucinda DiNovo, Drew Farmer, Jennifer Groth, Stephanie Kilmer, and Phil Marler. Councilor Stephanie Kramer was absent. City staff present were City Manager Rodger Craddock, City Attorney Nate McClintock, Finance Director Susanne Baker, Public Works and Community Development Director Jim Hossley, Planner Debbie Eler, and Police Captain Chris Chapanar.

Flag Salute

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

Consider Approval of a Supplemental Budget to Appropriate Funds in the General Fund - Approval Would Require Adoption of Resolution 18-20

Finance Director Susanne Baker stated a supplemental budget was needed to appropriate General Fund contingency for additional personnel expenses due to attrition in the Police Department, resulting overtime, and cumulative Public Safety overtime due to the Isthmus Slough bridge closures.

Councilor DiNovo moved to adopt Resolution 18-20 to appropriate additional General Fund resources. Councilor Kilmer seconded the motion which carried. Ayes: Benetti, DiNovo, Farmer, Groth, Kilmer, Marler. Absent: Kramer.

Award of Contract for the Mingus Park and 8th Terrace Sewer Replacement Project

Public Works and Community Development Director Jim Hossley stated the City identified approximately 2,000 feet of sanitary sewer along the southern limits of Mingus Park and 700 feet of sanitary sewer on North 8th Terrace between North 9th and 10th Streets in need of repair. Both projects were listed in the City's Infrastructure Finance Authority Loan #1, smoke testing report, and were on the 20-year take-down schedule. Final design was completed earlier this year with an engineer's estimate of \$398,660. The project was advertised for construction bids with just one bid received on June 19, 2018 from Johnson Rock Products for \$494,911 with an alternate bid item of \$52,020 for a total of \$546,931.

Councilor Kilmer moved to award the Mingus Park and North 8th Terrace project contract to Johnson Rock Products for an amount of \$628,971, which included a 15% contingency.

Councilor Farmer seconded the motion which carried. Ayes: Benetti, DiNovo, Farmer, Groth, Kilmer, Marler. Absent: Kramer.

Public Hearing to Consider an Appeal of the Bay Area First Step Conditional Use Permit

Mayor Benetti asked if anyone in the audience had objection to the City Council holding a public hearing on jurisdictional grounds on land use application 187-ZON18-007, there were no objections.

Councilor Farmer declared an ex parte contact and stated he worked with persons with disabilities and due to his occupation, he knew many of the people representing interested agencies. After he knew the City Council would hear an appeal on the application, he informed those who asked him about the project that he could not discuss aspects of the project.

City Planner Debbie Erler stated the City Council as the appellant body to the Planning Commission would hear the appeal and conduct a public hearing to consider the request. A de novo hearing process, the format requested by the appealing party and a process the City Council was advised to follow based on its legal counsel, meant a completely new hearing would occur with no implied deference to the previous hearing ruling or decision. Pursuant to Coos Bay Municipal Code Chapter 17.130.130 (8) Review Body Decision, the City Council shall by final order affirm, reverse, or modify in whole or part a determination or requirement of the decision that was under review. All testimony and evidence from the original hearing was part of this review and for the record.

Ms. Erler read aloud the public hearing disclosure statement, The review criteria for a Conditional Use Permit, was found in Coos Bay Municipal Code Chapter 17.325 and was included in the staff report and notice. The testimony and evidence was to be directed toward the applicable criteria or other criteria in the plan or land use regulations which the person believed was applicable to the decision. Failure to raise an issue with sufficient detail to afford the decision makers and parties an opportunity to respond to the issue precluded appeal on that issue.

Ms. Erler provided printed copies to the City Council of the correspondence received after the Planning Commission hearing. Those documents were emailed to the City Council the applicant and other interested parties Monday afternoon and Tuesday morning. Ms. Erler read the names of those submissions into the record:

Letters of support:

June 20, 2018	Eric Martin, Director of MetroPlus Association
June 21, 2018	Jason Renaud, Secretary to the Board, NW Law/Mental Health Conf. OR Housing Conf.
June 21, 2018	Char Luther, Community Organizer
June 21, 2018	Allan Lazo, Executive Director, Fair Housing Council of Oregon
June 25, 2018	Scott Cooper, Executive Director, Alternative Youth Activities
June 26, 2018	Mary McCurdy, Housing Land Advocates Board member

June 26, 2018 Tara Johnson, Exec Director Devereux Center

Petition in support:

June 25/26, 2018 Petition/Signatures (1, 2, 3, 4)

Email - questions:

June 26, 2018 Janann Rutschke

Letters of opposition:

June 20, 2018 Mark McPeek, business owner

June 26, 2018 Linda Pearson, resident

June 25, 2018 Ruth Gallagher (family & friends)

June 25, 2018 Tom Greaves, business owner & resident

June 25, 2018 Stephanie Smith, resident

Petition of opposition:

June 25, 2018 signatures/business names

Ms. Erler provided a PowerPoint presentation and stated the agenda item was an appeal of the City of Coos Bay Planning Commission decision of May 8, 2018 that denied Bay Area First Step's request to convert the existing motel into a residential rehabilitation facility, which required a Conditional Use Permit (CUP) approval "in the Commercial district for all uses considered to fall under the category defined as 'residential care homes'. A CUP was required of any multi-family residential development proposed in a Commercial district.

The Planning Commission considered staff's recommendation to approve the request with conditions. A project presentation by a representative of BAFS summarized the proposed use, program objectives; numerous public comments on the proposal's merits, risks, and potential neighborhood impacts.

Upon closing the public testimony, the Planning Commission members discussed the proposal and comments regarding its ability to integrate into the Empire area. Their decision to deny the request was based loosely on the failure to satisfy Criterion #4 with a new finding that the proposed use would be significantly detrimental to the health, safety or general welfare of the neighborhood and possibly hamper efforts to improve the vitality of the Empire area.

The applicant, Bay Area First Step (BAFS), requested a waiver of the land use review fees for the CUP. Instead, the Empire Urban Renewal Agency provided funds for the CUP application based on the non-profit status of the BAFS organization and the project as a potential economic development. The appeal fee and associated mailing and notification costs were paid by BAFS with no other anticipated costs unless appeal of the City Council's decision moved the application to the Land Use Board of Appeals (LUBA).

Ms. Erler stated based on the adopted Findings and Conclusions, as supported by the applicant's submittal by reference as Attachments "A" and "B", staff recommended approval of Conditional Use Permit #187-ZON18-007 to convert the existing motel into an adult residential rehabilitation facility "Residential Care Homes" with the following conditions:

1. The applicant shall secure all building and other applicable permits, as required, from the City of Coos Bay or the State of Oregon.
2. It shall be the responsibility of the applicant to ensure all applicable resource agency permits and approvals were obtained prior to commencement of work. The resource agencies may include but were not limited to Department of Environmental Quality, Army Corps of Engineers, Department of State Lands, State Historic Preservation Office, local tribes, etc.
3. The project layout shall substantially adhere to the submitted site plan presented with the original application.
4. The applicant shall be responsible for all service and utility extensions to serve the development.
5. A parking identification plan shall be submitted for staff review and approval and such improvements put into place prior to a final Certificate of Occupancy.

Steve Sanden, North Bend: Executive Director of BAFS, stated their program provided recovery services with positive results; housing and transportation assistance, re-connection with family and children, case management to put lives back together. Mr. Sanden discussed the many other properties renovated/constructed for their use. BAFS provided experienced staff, alcohol and drug free housing, and peer delivered supportive services. Their CUP application for Bayview Village would not require a large financial investment and allow for immediate availability for rehabilitation services and provide treatment for 40 additional residents. Mr. Sanden presented BAFS's business plan for the Bayview Village project and drug and alcohol policy which did not allow substance abuse by residents or visitors.

Jennifer Bragar, Attorney, Portland: Represented BAFS and stated the population to be served at the rehabilitation center were considered disabled and the Fair Housing Act added complexity that required the Council to not consider the characteristics of the people who would live at the rehabilitation center. ORS 197.307(4) provided a government may adopt and apply only clear and objective standards and procedures regulating the development of housing, including needed housing. Ms. Bragar stated the proposed location and use had no land use impact greater than the existing use. A rehabilitation housing center was very similar to the existing motel use and the standard applied by the Planning Commission did not take this into consideration but they rather based their decision on the type of persons who would occupy the facility. The characteristics of the site were suitable to accommodate the proposed use and necessary mitigation of potential adverse impacts considering size, shape, location, topography and natural features. Adequate capacity to serve the use, the establishment, maintenance, or operation to the proposed use would not be, under the circumstances of the particular use, significantly detrimental to the health, safety or general welfare of persons, residing or working in the neighborhood. Nor would the proposed use be detrimental or injurious to the property and improvements in the neighborhood or to the general welfare of the City. BAFS's application addressed the lack of affordable housing and housing assistance in the area. BAFS modified its request to not apply any of the vague disclosures.

Mayor Benetti asked one person on each side of the issue represent their constituents and requested testimony be limited to two minutes.

Kelly Dawn Ogle, Coos Bay: Spoke in favor of the application; stated having housing

assistance was a motivational factor to end substance abuse for the long term. Ms. Ogle spoke of the needs of the area for a successful rehabilitation center, the many lives positively impacted and changed through the rehabilitation process, and her professional experience as a counselor with this population.

Jason Paul, Coos Bay: Spoke in favor of the application; provided personal testimony on alcohol abuse and the lack of motivation to change; after losing custody of his children he contacted BAFS to change his life and through detox, he was able to have his children returned to his custody, was employed, and was giving back to other families with similar circumstances.

Curt Smith, North Bend: Spoke in favor of the application; after a prison sentence and battling addiction, BAFS helped him become employed and through schooling recently graduated with a Bachelor of Science degree and now helped others with substance abuse.

Paul Gonzales, Coos Bay: Spoke in favor of the application; was in recovery for 15 months after suffering 25 years of substance abuse; was one of ten families recently helped, was reunited with his children, was gainfully employed, a peer mentor program participant, and was appreciative of the new life he achieved.

Anna Marie Slate, North Bend: Spoke in favor of the application; stated she had met many people who had gone through BAFS's program and they had success.

Michael Evans, Coos Bay: Spoke in favor of the application; stated with the help of BAFS to end his substance abuse, they helped him reunite with his wife and obtain a driver's license. The improvements made to the motel were the best he had ever seen the property.

Jessie Hill, North Bend: Spoke in favor of the application; stated he saw Paul Gonzales end his substance abuse and it inspired him to do the same. After he contacted BAFS and was clean and sober, his wife saw the change and also went through BAFS to end her substance abuse. They were now close to reuniting with their children and becoming a healthy family.

Joann Hill, Coos Bay: Spoke in favor of the application; she was a BAFS resident and witnessed many people reunite with their children and believed BAFS had a good program.

Robert More, Coos Bay: Spoke in favor of the application; stated BAFS had a proven track record for success, employed professionals, and provided needed housing and substance abuse recovery in an effective way. The land use application being considered would help address the housing shortage identified in the recently completed regional housing study.

Tom Greaves, Coos Bay: Spoke against the application; stated the Empire district had a fragile business district and there was already several similar facilities in the area. The facility did not improve the downtrodden atmosphere of Empire and prohibited a positive tourist experience. Mr. Greaves read a letter from his daughter, a recovered addict, which stated the motel facility was the worst place for an addict to live. Mr. Greaves stated his daughter had to leave the area because of her substance abuse memories of having lived at the motel were too strong to overcome. Suggested the Planning Commission based their decision on input from businesses in the area.

Tim Stillion, Coos Bay: Spoke against the application; had a business in Empire and didn't foresee new businesses opening in Empire because of those who were in the public view appear to be substance abusers. Did not believe the location was appropriate due to the negative connotation with the area and suggested to move the facility outside of the city to a calmer neighborhood.

Randy Baer, Coos Bay: Spoke against the application; owned four properties in Empire and stated he paid a lot of taxes for services he did not receive; had friends and brothers who died and did not made it through recovery. As a landlord he watched out for his tenants due to the illegal activity of the homeless who wandered the area and necessitated that he constantly call the police for assistance. If the facility was located Empire it would cause his property values to decrease.

Pastor Ivan Sharp, Coos Bay: Spoke in favor of the application. Suggested the location was close to his church and would make it easier when transporting those interested to attend church.

Roger Wilson, Coos Bay: Spoke against the application; stated the current owner of the Pacific Empire Motel owed three years in back taxes and questioned if the out of town owner would like a similar facility in his south Eugene neighborhood. Suggested the location was not appropriate in downtown Empire and suggested it should be located in a country setting. Stated drug and substance abuse was not a disability it was a choice and he had little compassion for those who chose to use. A disability, for example, was the result of someone who worked hard physically and ended up with a bad back etc. from pulling on the green chain and other similar work.

Linda Pierson, Coos Bay: Spoke against the application; stated she was supportive of BAFS but did not believe Empire was the proper location; there was limited availability of commercial properties in the area and the proposed site had a better use.

Joseph Nuness, Coos Bay: Spoke against the application; questioned if BAFS considered the bars in close proximity to the proposed location which would be a detriment to residents during recovery.

Jonah Collins, Coos Bay: Spoke against the application; stated the property had a better use which would create jobs and attract new businesses.

Tom Osborne, Coos Bay: Stated he was not in favor nor against the application; stated the emotional arguments presented were not appropriate for consideration of the application. The meeting was a land use law action as the application either met or did not meet the criteria.

Mayor Benetti stated the rebuttal section would begin with the final argument. Tom Greaves requested a show of hands of the audience of those for and against the application with the majority of those present who raised their hands being in favor for the application.

Jennifer Bragar, Attorney, Portland: Represented BAFS, stated the land use criteria was the standard the Council needed to measure if the findings were clear and objective. The neighborhood clearly needed the BAFS services offered and had a successful business

model. Success for a substance abuser was not based on the proximity of local bars but on a supportive community, which was what BAFS provided. Ms. Bragar stated any other decision other than reversing the Planning Commission's decision would place the City Council in legal jeopardy and continue the legal recourse of the applicant.

Mayor Benetti closed the public hearing and thanked the audience for the respect shown to each other.

Councilor DiNovo asked City Attorney Nate McClintock to provide a legal opinion for the Planning Commission's action and to guide the Council on a decision. Mr. McClintock stated if he did that it would waive client attorney privilege and requested Council consensus. Consensus of the Council was to waive client attorney privilege. Mr. McClintock stated he reviewed all of the applicable documentation and the appeal was well taken. Based on court cases, Americans with Disabilities Act, and the Fair Housing Act the Planning Commission's action to base the decision on fears of what may occur was against the statutes which required clear and objective standards. Mr. McClintock stated the basic tenets of the ordinance had been met and there was no evidence to support the contrary. The proposed use of the facility had a proven track record which decreased illegal activity. Mr. McClintock stated in his opinion the appeal was well taken and the Planning Commission decision should be reversed. If the Council did not reverse the action the matter would likely go to the Land Use Board of Appeals or the Federal courts and result in the City losing and a substantial financial impact with having to pay attorney fees on both sides and damages to those impacted.

Councilor Marler stated no evidence had been presented which evidenced staff's findings were in error.

Councilor Groth moved to adopt Findings and Conclusions, as supported by the applicant's submittal by reference as Attachments "A" and "B", approve Conditional Use Permit #187-ZON18-007 to convert the existing motel into an adult residential rehabilitation facility "Residential Care Homes" with the following conditions: 1. The applicant shall secure all building and other applicable permits, as required, from the City of Coos Bay or the State of Oregon. 2. It shall be the responsibility of the applicant to ensure all applicable resource agency permits and approvals were obtained prior to commencement of work. The resource agencies may include but were not limited to Department of Environmental Quality, Army Corps of Engineers, Department of State Lands, State Historic Preservation Office, local tribes, etc. 3. The project layout shall substantially adhere to the submitted site plan presented with the original application. 4. The applicant shall be responsible for all service and utility extensions to serve the development. 5. A parking identification plan shall be submitted for staff review and approval and such improvements put into place prior to a final Certificate of Occupancy. Councilor Farmer seconded the motion which carried. Ayes: Benetti, DiNovo, Farmer, Groth, Kilmer, Marler. Absent: Kramer.

Additional attachments to the above agenda item and final staff comment

Ms. Erler stated there was a 15-day appeal period from the date the decision was put in writing, which would be by Friday, June 29, 2018.

Adjourn

There being no further business to come before the Council, Mayor Benetti adjourned the meeting. The next Council meeting was scheduled for July 17, 2018 in the Council Chambers at City Hall.



Joe Benetti, Mayor

Attest: 

Susanne Baker, City Recorder