

MINUTES OF THE REEDSPORT CITY COUNCIL REGULAR SESSION DECEMBER 5, 2011 7:00 P.M. CITY HALL COUNCIL CHAMBERS.

PRESENT:

Mayor, Keith Tymchuk  
Councilors Mike Macho, Bill Otis, Diane Essig, and Bill Walker  
(Ginger Anderson and Kathi Wall-Meyer were absent)  
City Manager, Scott Somers  
City Attorney, Steve Miller

OTHERS PRESENT:

Deanna Schafer, Vera Koch, Melissa Anderson, Chief Mark Fandrey, Diane Novak, Floyd Dollar, Norman Floyd, Robin Dollar, Jacque Potter, Susan Martin, Roberta Brazell, Debbie McKinney

1. CALL TO ORDER/PLEDGE OF ALLEGIANCE

2. CITIZEN COMMENTS

*This time is reserved for citizens to comment on items that are not on the Agenda. Maximum of five minutes per item, please.*

There were no citizen comments

3. PRESENTATIONS, PROCLAMATIONS, AWARDS

A. Good Friends and Neighbors award-Jim Dawson.

Mayor Keith Tymchuk read a certificate that was prepared for Mr. Jim Dawson. The award was given because Mr. Dawson has gone above and beyond in helping keep Champion Park a safe and clean place to visit.

B. Lion's Park fence presentation.

Ms. Susan Martin gave an update on the Lion's Park Fence Project. She said that grant money for Art projects has been scarce this last year and the committee has not been able to secure funding as anticipated. Martin said that a generous amount of money has been donated by local residents through the Adopt a Leaf fundraising effort. The committee is proposing to begin completing the project with a phasing approach. Martin estimates that they have raised enough money to complete one section of the fencing and construction should be done by next summer.

4. APPROVAL OF THE AGENDA

Councilor Mike Macho motioned to approve the Agenda.

Councilor Diane Essig seconded the motion.

MOTION:

that the City Council approve the Agenda.

VOTE:

A vote was taken on the motion with the following results:

AYES 5 NAYES 0

(Mayor Keith Tymchuk, Essig, Otis, Macho, and Walker voted in favor of the motion.)

Mayor Keith Tymchuk declared the motion passed unanimously.

5. PUBLIC HEARINGS

A public hearing on proposed land use code text amendments.

Shall the City Council adopt an Ordinance amending the Reedsport Municipal Code Title 10 Land Use, Chapter 10.72.070 Commercial C-2 Zone and assign 2011-1109 as the title?

City Planner, Melissa Anderson said that the proposal amends the Commercial C-2 zone of the city code to provide “*residential as a secondary use*” as a conditional use in all areas of the zone. Currently, Reedsport Municipal Code (RMC) 10.72.070 allows “*residential quarters as a secondary use*” in the C-2 Commercial zone as a **Permitted Use in Old Town** on Highway 38 from 3<sup>rd</sup> to 5<sup>th</sup> Street and as a **Conditional Use in all other areas of the C-2 zone**. This distinction in the code has created a situation where ground-floor residential uses are competing for the limited commercial space in Old Town on Highway 38. Additionally, the monitoring and enforcement of public safety and building code standards has been difficult where residential secondary uses are permitted outright. Further, neighboring property owners have no advanced notice prior to a conversion to residential use, which eliminates their opportunity to identify possible impacts and mitigation measures.

This issue was highlighted during the December, 2010, Planning Commission interpretation of “*residential quarters as a secondary use*” in the commercial zone and its subsequent appeal to City Council. On March 7, 2011 the City Council made a decision to interpret “*residential quarters as a secondary use*” in the C-2 commercial zone as the following:

1. Residential use above ground floor commercial is considered a secondary use.
2. Residential use on the ground floor may be allowed as a secondary use only if all of the following standards are met:
  - a. No more than 50% of the total gross floor area of any ground floor unit may be dedicated to residential use, and a minimum of 50% of the gross floor area of any

- ground floor unit shall be dedicated to commercial use;
- b. Buildings facing a street (or streets if a corner lot) shall include a first story commercial use that occupies the first 25 feet of the building(s) that face a street -- residential use on the ground floor cannot face the street;
  - c. Residential on the ground floor must have a separate entrance from the commercial use;
  - d. A partition wall (with or without doorway) shall separate the residential use and commercial use;
  - e. A residential use on the ground floor is allowed only in association with a commercial use that has a valid City business license. If the commercial use goes out of business, such as it is not open to the public and it is without a valid business license, then the residential cannot remain because it then is considered a primary use.
  - f. This interpretation shall take effect on May 1, 2011.

Despite this clarification, ground-floor residential uses continue to compete with the limited commercial space in Old Town on Highway 38. Consequently, a text amendment to the C-2 Commercial zone was presented by staff and initiated by Council on September 6<sup>th</sup>, 2011.

The original proposal prohibited future ground-floor residential uses and permitted residential uses on the second floor and above in Old Town (Highway 38 from 2<sup>nd</sup> Street to East Railroad), and required a conditional use permit for residential as a secondary use in all other areas in the C-2 Commercial zone. After conducting a public hearing on October 24, 2011, the Planning Commission revised the original proposed text amendment and recommended the City Council require a Conditional Use Permit for "*residential as a secondary use*" in all areas of the C-2 Commercial zone. The Planning Commission's recommendation to the City Council with exhibits of testimony is available for review at City Hall.

Councilor Bill Otis asked if the current uses would be grandfathered in.

City Manager Scott Somers said that if they are legal uses than yes, but if they are not up to code they would have to be made to be compliant. He said that it was one of the problems of the current code that these uses were not triggered by variance applications so it is not known if there have been modifications made that are legal or not. Some of them might not meet fire code. Somers said that it is very important for life and safety because many of the walls are adjoining or are very close to other businesses and those businesses deserve to be safe.

Councilor Mike Macho asked if the City was going to have the building inspector or fire marshal start inspecting buildings.

Somers said that due to the nature of some of the landowners in the downtown area that is not a particularly easy task and there is some hesitation on following through on doing that. He said that he feels it is very important that Dave Gates, as the contracted building official, move forward with that.

Councilor Bill Walker said that he would have a hard time if someone came to his residence and wanted to inspect it. He felt it might be a problem.

Somers said that the City does need to be very careful with that. He said that the difference is that a residence was given an occupancy permit before a person moved in. These buildings in question have not necessarily received occupancy permits, these people moved in without going through that process because it was an allowable use. When the original code was adopted there were not enough triggers or mechanisms put in place to trigger to insure that the people that moved into those buildings were going to be safe.

Mayor Keith Tymchuk opened the session up for public comment.

There were none.

Mayor Keith Tymchuk closed the public portion of the meeting.

Mayor Keith Tymchuk said that the reason he is in favor of this amendment is that there is a public safety component to it. He would like to see that a process is in place. He said that he is not entirely excited about ground floor residential use but he does like unity and this will make it uniform throughout the entire zone.

Councilor Bill Otis said that he does not like the idea of the inspector knocking on doors and saying that they want to look in to a person's apartment.

Mayor Tymchuk asked the City Manager what happens when there is a complaint and the building official gets a door slammed in his face. Does this issue become a law enforcement issue or state code issue?

City Manager Scott Somers said that the City has been working with the City attorney on developing what is called an Administrative Warrant. This would be issued by the judge and allow the City (or designee) to enter the premises.

Somers said that since he has been in Reedsport one building has been condemned. This building had a laundry list of items that needed to be addressed before it could be considered safe.

Mayor Tymchuk said that what he, and other Councilors, want to make sure is that the City is not going to be heavy handed in going after these premises. He said that what he is hearing is that if there is a known violation or a complaint than the City will investigate.

Somers said that normally code enforcement is on a complaint basis but in these instances involving safety, it would be more driven. He said that if it is a safety issue that the City knows about then the City will be very proactive in investigating.

Mayor Tymchuk said that he wanted to point out that there are no direct costs to the City for amending this code.

Councilor Mike Macho motioned to adopt Ordinance 2011-1109 to amend the Commercial C-2 zone of the city code to provide “residential quarters as a secondary use” as a conditional use in all areas of the zone.

Councilor Diane Essig seconded the motion.

MOTION:

that the City Council adopt Ordinance 2011-1109 to amend the Commercial C-2 zone of the city code to provide “residential quarters as a secondary use” as a conditional use in all areas of the zone.

VOTE:

A vote was taken on the motion with the following results:

AYES 5 NAYES 0

(Mayor Keith Tymchuk, Essig, Otis, Macho, and Walker voted in favor of the motion.)

Mayor Keith Tymchuk declared the motion passed unanimously.

6. CONSENT AGENDA

*Routine items of business that require a vote but are not expected to require discussion by the Council are placed on the Consent Calendar and voted upon as one item. In the event that a Councilor or citizen requests that an item be discussed, it will be removed from the Consent Calendar and placed under General Business.*

- A. Approve minutes of the work session of November 7, 2011.
- B. Approve minutes of the regular session of November 7, 2011.
- C. Shall the City Council adopt a meeting schedule for City Council and Budget Committee meetings for the year 2011?
- D. Motion to approve the Consent Calendar.

Councilor Mike Macho motioned to approve the Consent Calendar.

Councilor Bill Walker seconded the motion.

MOTION:

that the City Council approve the Consent Calendar.

VOTE:

A vote was taken on the motion with the following results:

AYES     5                          NAYES     0    

(Mayor Keith Tymchuk, Essig, Otis, Macho, and Walker voted in favor of the motion.)

Mayor Keith Tymchuk declared the motion passed unanimously.

7. GENERAL BUSINESS

A. Landscaping code proposal withdrawn.

City Planner Melissa Anderson said that on Monday, November 21, 2011, the Planning Commission held a public hearing on a proposal to adopt new code standards for landscaping, screening and buffering. Based on public comment, the Planning Commission decided to withdraw the proposal and not move it forward to the City Council.

She said that much of the public testimony opposed any form of new regulation. Consequently, there did not seem to be any room for improving the proposed landscaping code to meet the citizen's concerns. Other comments cited the current economic and political climate for the negative reception to the proposal. Therefore, the community may be open to introducing some form of landscaping and screening standards in the future, but the timing is not right for the proposal at this time.

Anderson said that the City of Reedsport does not have any landscaping requirements at the present time and in the spring of 2010 the Planning Commission identified establishing landscaping standards as a priority goal, because landscaping standards would beautify the City for residents and visitors alike; landscaping would also help make Reedsport a more viable tourist destination. This objective is also consistent with City Council goals: Goal #2: *Desirable Place to Live*; Goal #3: *Economic Growth and Viability*; and Goal #6: *Attractive Community to Visit*.

To this end, the Planning Commission worked for several months on crafting a draft code proposal to establish standards for landscaping, screening and buffering. Prior to initiating amendments to the code, public outreach efforts included presentations to various community groups: Rotary Club on August 4<sup>th</sup>, Reedsport/Winchester Bay Chamber of Commerce on August 25<sup>th</sup>, Lyons Club on September 1<sup>st</sup> and the Lower Umpqua Development Forum on September 14<sup>th</sup>, and an article in the City's September Newsletter.

Following these presentations, the Planning Commission initiated amendments to the land use code on September 26<sup>th</sup>, 2011, in order to begin the public hearing and notification process. Notice of the proposed amendment was sent to all property owners within the city, all required agencies, and

a legal notice was published in the newspaper. On November 21, 2011, the Planning Commission held a public hearing on the proposal and based on public testimony withdrew the proposal.

Anderson said that she would recommend that this issue be revisited down the road. Once the downtown plan is developed it will be designed to go hand in hand with a landscaping code but unfortunately the climate is not right at this time.

Mayor Tymchuk said that he understood that this would have affected only new development and not existing business.

Anderson said that it is correct unless a business was expanded and then the code would go into affect proportionately to the enhancement.

City Manager Scott Somers said that it should be clarified that this ordinance would have affected commercial and not single family residential properties.

Mayor Tymchuk and Councilor Mike Macho said that they received comments and phone calls in opposition of this ordinance.

Tymchuk said that it is clear that a regulation like this would improve the appearance of the community.

City Manager Scott Somers said that he wanted to point out that this issue has come up during meetings of the Lower Umpqua Economic Development Forum in terms of economic development, the value of beautifying the City to draw more businesses here. He also wanted to remind the council of a study that was completed for Douglas County recently by the Chabin Group. One of the items that they came up with is making sure that your site or your area is competitive ready and part of that was what the living environment looks like in your community. Somers said that if you look at other communities that have landscape ordinances in place they have done quite well economically. He said that Reedsport is unique in the fact that it does not have a landscape ordinance in place. He said that the ordinance that was proposed was fairly lenient in terms of working with businesses and being flexible.

- B. Shall the City Council adopt an ordinance suspending collection of utilities system development charges and assign 2011-1111 as the title?

City Manager Scott Somers said that the City received a building permit application which results in a change in current building use. Since a change in use would occur, Utilities System Development Charges (SDCs) may apply. As the current Code reads, it appears that the property owner may be subject to a substantial SDC charge due to the change in use. The potential charge seems unreasonable and outside of the intent of levying system development charges.

Additionally, as an economic development tool, the City Council has, in the past, considered placing a one year moratorium on SDCs. Therefore, Staff has drafted an ordinance which will place a one year moratorium on SDCs which has the potential to accomplish three things: 1) allow the property owner who applied for the building permit to move forward with his project;

2) create time for staff to research and further clarify the purpose and intent of SDCs and to then recommend amendments if necessary; and 3) create an economic development incentive for development to occur. The draft ordinance is attached for Council's consideration.

The current fiscal budget anticipated 2 water SDC, 1 wastewater SDC, and 1 stormwater SDC. Those anticipated funds were received this fall. Therefore, if Council adopts the proposed ordinance, no loss of anticipated revenue from SDCs would occur.

Councilor Bill Walker motioned to adopt an ordinance suspending collection of utilities system development charges.

Councilor Mike Macho seconded the motion.

MOTION:

that the City Council adopt an ordinance suspending collection of utilities system development charges.

VOTE:

A vote was taken on the motion with the following results:

AYES 5 NAYES 0

(Mayor Keith Tymchuk, Essig, Otis, Macho, and Walker voted in favor of the motion.)

Mayor Keith Tymchuk declared the motion passed unanimously.

C. Shall the City Council enter into an Intergovernmental Agreement with Gardiner Sanitary District for providing backup assistance for the Gardiner wastewater system?

City Manager Scott Somers said that the City has received a request from the Gardiner Sanitary District to provide emergency back-up wastewater services. An agreement has been drafted and the City Attorney has had an opportunity to review it.

Somers said that according to their agreement with the DEQ when their certified worker is not available they technically need to have a certified supervisor over their other worker to potentially provide assistance to that person. Staff sees this as a positive move. It is unknown at this time how much revenue would be generated as a result of entering into this agreement, however, any revenue generated would be appropriated to the Wastewater Fund in order to help offset future wastewater rate increases.

Previously the district had contracted with the Winchester Bay

Councilor Essig motioned to approve an Intergovernmental Agreement with the Gardiner Sanitary District for providing backup assistance for the Gardiner wastewater system, authorizing the City Manager to sign the Agreement on behalf of the City.

Councilor Bill Walker seconded the motion.

MOTION:

that the City Council approve an Intergovernmental Agreement with the Gardiner Sanitary District for providing backup assistance for the Gardiner wastewater system, authorizing the City Manager to sign the Agreement on behalf of the City.

VOTE:

A vote was taken on the motion with the following results:

AYES 5 NAYES 0

(Mayor Keith Tymchuk, Essig, Otis, Macho, and Walker voted in favor of the motion.)

Mayor Keith Tymchuk declared the motion passed unanimously.

- D. Shall the City Council adopt a Resolution establishing immunity from certain personal injury or property damage claims described in House Bill 2865 and assign 2011-018 as the title?

City Manager Scott Somers said that during the 2011 Regular Session Oregon Legislature enacted House Bill (HB) 2865 to limit private claims or rights of action based on negligence for personal injury or property damage resulting from the use of a trail that is in a public easement or in an unimproved right of way.

This bill automatically applies to cities with populations of 500,000 or more and allows cities with a lesser population to opt in to limit liability in the manner established by the law.

City County Insurance Services (CIS), the City's liability coverage, has been consulted and they are encouraging cities with a population of less than 500,000 to adopt a resolution opting in to this regulation relating to public immunity. The City attorney has reviewed and concurs with CIS.

Councilor Macho motioned to adopt a Resolution establishing immunity in accordance with HB 2865 and assign 2011-018 as the title.

Councilor Bill Walker seconded the motion.

MOTION:

that the City Council adopt a Resolution establishing immunity in accordance with HB 2865 and assign 2011-018 as the title.

VOTE:

A vote was taken on the motion with the following results:

AYES 5 NAYES 0

(Mayor Keith Tymchuk, Essig, Otis, Macho, and Walker voted in favor of the motion.)

Mayor Keith Tymchuk declared the motion passed unanimously.

8. MISCELLANEOUS ITEMS

*(Mayor, Councilors, City Manager, City Attorney)*

Mayor Tymchuk said that unofficially there will be a town hall meeting with Senator Wyden at the Pacific auditorium at 4:00pm on Sunday January 8th.

Councilor Macho and Essig reported that the Christmas in July fundraiser was a success. Approximately \$1500.00 was raised. Essig said that this will allow some projects to be completed in the off season when an emergency occurs.

Reedsport History book is now on sale at the Discovery Center.

City Manager Scott Somers said that the Regions Solution Team (appointed by the governor) is co-sponsoring a joint meeting with the League of Oregon Cities at various cities.

9. EXECUTIVE SESSION OF THE REEDSPORT CITY COUNCIL DECEMBER 5, 2011  
CITY HALL COUNCIL CHAMBERS.

PRESENT:

Mayor Keith Tymchuk, Councilors Bill Otis, Mike Macho, Diane Essig, and Bill Walker (Ginger Anderson, Kathi Wall-Meyer were absent)

City Manager Scott Somers

Attorney Steve Miller

OTHERS PRESENT: Deanna Schafer

Pursuant to ORS 192.660(2)(e) – to conduct deliberations with persons designated by the governing body to negotiate real property transactions.

A. Shall the City Council approve a purchase agreement for property associated with the Downtown Stormwater Mitigation Project?

City staff has been negotiating with Mr. Hatcher concerning either a purchase agreement or an option to purchase for property located at 155 E. Railroad Ave. Acquisition of the property will allow the City to continue moving forward with its Downtown Stormwater Mitigation Project, including satisfying USDA RD funding requirements. At the November 7, 2011 City Council meeting, Council directed staff to pursue purchasing the property via a purchase agreement rather than an option to purchase. Staff has finalized the purchase agreement for the Council's review and consideration.

At the May 2, 2011 City Council meeting, the City Council agreed to offer Mr. Hatcher, the owner of the property, \$65,000 for the property. Amortized over a ten (10) year period at a 4 percent interest rate, monthly payments would be \$607.47. As directed by the Urban Renewal Advisory Board, \$60,000 annually is to be appropriated for the Downtown Stormwater Mitigation Project debt service. Since this property purchase is part of the larger Downtown Stormwater Mitigation Project the monthly payments would be directed to Mr. Hatcher and appropriated from the Urban Renewal District Fund. Once the project is complete and funding proceeds have been received from USDA RD or another source, the loan with Mr. Hatcher would be paid off and the \$60,000 annual appropriation from the Urban Renewal District would be directed toward USDA RD repayment or the appropriate lender.

The purchase agreement contains a "no pre payment penalty" clause. Therefore, anytime Council gives direction to pay off this purchase agreement before scheduled, it may do so without penalty.

Councilor Macho motioned to approve a purchase agreement for property associated with the Downtown Stormwater Mitigation Project.

Councilor Essig seconded the motion.

MOTION:

that the City Council approve a purchase agreement for property associated with the Downtown Stormwater Mitigation Project.

VOTE:

A vote was taken on the motion with the following results:

AYES 5 NAYES 0

(Mayor Keith Tymchuk, Essig, Otis, Macho, and Walker voted in favor of the motion.)

Mayor Keith Tymchuk declared the motion passed unanimously.

10. ADJOURN

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Mayor Keith Tymchuk

ATTEST:

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Deanna Schafer, City Recorder