

CITY OF PRINEVILLE

MINUTES

February 26, 2008

The meeting of the Prineville City Council was called to order on February 26, 2008 at 6:30 PM in the Council Chambers at City Hall by Mayor Wendel. Present were Council Members Steve Ilk, Jack Seley, Gordon Gillespie, Steve Uffelman, Betty Roppe, Dean Noyes and City Manager Robb Corbett.

Present representing the press media were Don Wood from Hometown Radio and Kevin Gaboury from the Central Oregonian.

The meeting was opened with the flag salute.

CONSENT AGENDA:

A. Minutes of February 12, 2008 regular meeting.

Council Member Roppe moved to approve the consent agenda. Council Member Gillespie seconded and the motion passed unanimously.

VISITORS, APPEARANCES AND REQUESTS:

Bryan Iverson from the Crook County Chamber of Commerce gave an update on the Branding Project.

Bryan reported the committee has met three times with 12-20 people attending these meetings. They have gone through the logo development process and are moving on to the brand identity statement.

Bryan stated there seems to be an idea that they are changing the identity of Prineville, but they are actually defining what Prineville really is. They will be talking to civic groups in hopes of making the public aware of why they are doing the branding project.

COMMITTEE APPOINTMENTS: Mayor Wendel handed out a list of the committees to the Council to review and see if there are any changes they would like to make before the next Council Meeting.

Council Member Roppe asked if the Fish Reintroduction is not also one of the Committees? She along with City Manager Robb Corbett and Mayor Wendel attend these meetings.

City Manager Robb Corbett stated they also talked about the work that the Council has done to develop specific objections for the coming year, and now staff has a responsibility to bring back a resource loaded response as a work plan for the coming year. One of the things they talked about was using the committees as a resource to potentially help us achieve some of the objectives that the Council has identified.

APPOINTMENTS TO BUDGET COMMITTEE: Mayor Wendel reported three applications were received to fill the three vacancies on the Budget Committee. The applicants are: David Neuberger, Kendal Wayne Huestis and Karole Stockton. All of these will be three-year terms.

Council Member Roppe moved to appoint David Neuberger, Kendal Wayne Huestis and Karole Stockton to the Budget Committee. Council Member Ilk seconded and the motion passed unanimously.

Council Member Roppe suggested the two members that are new to the budget process, receive some introductory orientation to the process, so they understand what needs to take place during the City's budgeting process.

DECISION ON APPEAL OF SDC FEES BY SIMMONS BROTHERS LLC: Council Members Gillespie and Noyes declared a conflict of interest and sat in the audience.

Community Development Director Ricky Sites stated she wanted to make a correction to the last meetings fees and there is an error under the water SDCs. It shows there are 4 EDUs that are being assessed for this SDC, however, originally it was multiplied by 6, which was the number of EDUs before you took out the 35% storage. Therefore, the charge was \$5,117.48 too much and that has now been deducted from the SDC fee requirement.

Hank Simmons stated he wanted to mention a few points that were presented at the last meeting to refresh the Council on what was said.

They are not a new business. They are an old business that has been established for 58 years doing the same sort of thing. The water usage has been documented for years and certainly that is public knowledge and it's good to check that out. This whole process basically started out as accommodation in the hopes of the common good to help the museum to expand in a logical way that would allow them to expand there facilities and yet give them a place to go that made reasonable sense.

Hank stated he does not think it was any big mystery when the Council Members, and maybe even the staff, when they calculated their SDC charge and they looked at it, like here comes another appeal. The Council and the staff may feel that there is a better way to figure these charges and a better process that could be developed.

It seems to him that the two biggest systems in question that needs funding seems to be the sewer and water. Again, if you look at their past history you can see that they are now operating at one-quarter of an EDU, not 4 EDUs, but one-quarter of 1 EDU. In his opinion, you can't just reasonably put them in the same categories as restaurants, schools, nursing homes and car washes.

Hank stated he called a car wash today. It says if you are a two bay car wash that you will be assessed at 1 EDU. Quik Lube just added their second bay, so he asked them what the average usage of their car wash was? It turns out that their average usage is 56 units per month, at 750 gallons per unit, equates to 42,000 gallons of water per month. That is actual, not estimated. In 12 months that is 504,000 gallons. Their actual usage for 1 year is 27,000 gallons of water. That included the Lucky Penny washing clothes, which she is no longer part of their building. Their year's usage is barely half of what a car wash's monthly usage is and they are charged 1 EDU and they are being assessed at 4 EDUs. If traffic is part of the

calculation, you have got to drive into a car wash and drive out.

Hank stated at the last meeting the question was asked to the City Attorney if they evaluate this on a case by case basis, are we setting a precedent? He does not believe they are, because you have already made decisions and looked at appeals and possibly corrected things that did not seem right or needed fixing or did not fit exactly the way it was, so he would like to make sure that the Council does not feel that if you just do that, that you just opened a Pandora's Box. He does not feel that's the case, he believes that until you find another solution or another process, at least you are looking at situations and making a reasonable decision based on your findings and history and however you want to choose to make your decision. He applauds the Council for listening to him and listening to the issue and trying to put a reasonable fee on this that really does not fit the program.

Lastly, he is responding to Council Member Seley's peanut butter analogy, he likes that, it was good. They too want an even handed application of charges, so that they can feel like they were treated fairly along with everybody else. He felt like if you took the charge that they were being handed down, you are not spreading the peanut butter over the whole loaf, you are taking a whole jar and dumping it on a cracker. It is too much.

Hank stated he would like the Council to consider the recommendation that they presented to the Council at the last meeting.

Mayor Wendel asked for questions and comments from the Council.

Council Member Seley asked if this is a new building that we are talking about? It was stated it was a new building. He then asked if this building would require new connections to the services?

Hank stated he believes that it will require a new sewer and water connection. There are two buildings there now and they each have sewer and water.

Public Works Superintendent Jerry Brummer stated they will be able to use the existing water meter because it is a limited use.

Council Member Roppe stated she was the one who asked that this be put off for a week and what she found when she went in and did some research on it, is that the staff followed Resolution No. 1059 to the tee, other than the fact that they made a mathematical error. Where she sees the problem is that we need to review Resolution No. 1059 and that has nothing to do with the appeal. What she did find is that the staff did exactly what Resolution No. 1059 had asked them to do.

Hank stated in response to that, when they had their meetings and they had their preliminary meetings and they had their preliminary findings as to what they think they are going to be charged, that generated this conversation. The staff members are saying you should appeal and go through this process. Yes, they have to follow a procedure but on the other hand too, you kind of have to give it the sniff test, does it make sense, does it smell like the right thing to do or does it not? That is the

whole point here, sure they understand that there is a process that you went through to get to this point and you did the math incorrectly but you still came to this point. The problem is that this point in his mind and maybe some others doesn't really make sense. They want to correct that. If the appeal process is suppose to be that very vehicle, than let's really look at this and does this really make sense, not okay here is the deal, the calculations are correct and that is what you end up with. That is what he wanted to avoid.

Mayor Wendel stated what Hank is saying on the water SDC, even though you are using one-quarter of an EDU, you would be paying one full EDU instead of paying one-quarter EDU.

Hank stated even though he does not believe their building would not use any more water and sewer than a residential unit, he believes that paying one EDU for each of those is not unreasonable. He believes that is fair. That was part of the resolution too and they do not have any problem with that. The object is not to see how much you can get away with, it is the object to feel that it was a fair, equitable SDC charge.

Council Member Ilk stated he is of the opinion for a building this size and this type of use, 1 EDU is fair. That takes nothing away from what staff did. He read the ordinance and he knows exactly how they calculated it, but for a building with 3 or 4 people in it, this size, those numbers seem more appropriate.

Council Member Seley stated in the resolution, item #21, government buildings are charged 1 EDU per 200 square feet, so we are talking three times what they are being charged if you were a government building.

Hank stated it is also interesting to look at an elementary school of 20 students is 1 EDU, a junior or senior high of 15 students is 1 EDU, nursing home is 1 EDU for 3 beds, same as a hospital. A church with a 200 seat capacity, is 1 EDU. He understands that you make the calculations on the theory you are given, but that is what is causing the heart burn here.

Mayor Wendel stated for transportation you are proposing half of the rate.

Council Member Roppe asked Hank how he arrived at his figure for transportation?

Hank stated the transportation was nothing more than trying to establish that they are again an existing business and they are now getting rid of a tenant, so now not only does that alleviate some of the transportation that they were having come to their business, now come a new building, which is just their real estate office. Another thing is too, is there was Third Street access off of Third Street, that is now going away and there would be additional parking. Another thing is if you look at the resolution it says a transportation SDC is calculated on a peak trip from 4:00-6:00 and their office closes at 5:00. If we are closed at half of the peak trip time, then they should only be charged half of the peak traffic trips.

Mayor Wendel stated he has a question for Community Development Director Ricky Sites. If they were to negotiate with the museum and then that water usage goes away, then what is increase on

the system? What would be the proposed increase on the system if the museum has that property and they eliminate the water usage on that property, aren't they conceivably moving their water usage from that location to a new location?

Ms. Sites stated she believes the problem here is that we are talking about people and businesses moving rather than just the basic system that all of their SDCs and EDUs are based on and that is the accumulative growth of what is happening in the community from where they left and where they have gone and to what the new uses are. That is the way SDCs are figured.

Mayor Wendel stated the reason he mentions this is that he doesn't believe the museum would be interested in having it for a couple of years and leasing it out. Usually museums don't go out of business.

Ms. Sites stated the computations for SDCs for growth are very complex and people that have looked into them, see that they are and to answer on a one example kind of situation would probably not be reflective of what the actual SDCs are based on. That would be her concern about that.

Mayor Wendel stated he remembers that some places we have done this before, that an expansion of an existing business just because they needed the room, they didn't have any more trips or any more usage of the facility, they just needed more storage room, they were given a very small charge increase to SDCs. That is what he is getting at.

Ms. Sites stated those are the types of things that really do need to be addressed in our resolution.

Council Member Uffelman stated he certainly appreciates where the Simmons are coming from, but he honestly believes that we need to treat this as a commercial construction, recognizing that we have SDCs designed, but he also believes as was pointed out that there are inconsistencies with how the outcome of those SDCs have been designed. He would support going forward with not approving the request, but when the SDC resolution is revisited and redesigned, recalculating what that SDC charge ought to be and refunding the Simmons for that amount. It is a commercial business and while we know what they are doing as individual property owners and he appreciates that fact, we have an obligation to have adequate funding for the services we provide.

Council Member Roppe stated her opinion is that the flaw is in Resolution No. 1059 and we should be addressing it and addressing it soon. If this was not flawed, she would not be as alarmed about what the charge is on this one given case. We need to go back and review some of these issues in Resolution No. 1059.

Council Member Uffelman moved to deny the appeal, however that we bring back Resolution No. 1059 for reconsideration and upon re-evaluation of Resolution No. 1059 and the re-computing of the SDC charges that any changes or reductions in the fee that would have arrived from that, be refunded to the Simmons. Council Member Roppe seconded.

City Attorney Carl Dutli stated for clarification, Council Member Uffelman mentioned changes or reductions. Changes could

also mean going up, did you mean that it is a only way street only if it is reduced? Council Member Uffelman stated it is only if it is reduced.

Council Member Seley asked if we have procedures for refunding fees once they are charged? There are pretty specific rules on collection of SDCs and how they are spent. Can we legally refund anything out of that fund?

City Attorney Carl Dutli stated you can only spend them in certain manners and as far as refunding, he will have to check that out.

City Manager Robb Corbett suggested using some kind of escrow arrangement if we are not able to collect money as SDCs, perhaps use an escrow situation.

Mr. Dutli stated we could do it as an escrow, but then the money would not be able to be used until it was out of the escrow.

City Manager Robb Corbett stated it would happen pretty quickly that we would be wanting to review this and get a resolution.

Mayor Wendel stated even at its quickest, it is still going to be 4 months probably.

Mr. Dutli stated he would certainly feel more comfortable having it in an escrow account, where it has not been deposited into the SDC fund. That would certainly be cleaner than putting it into the fund and then trying to get it out. He shares Council Member Seley's concern.

Mayor Wendel stated he has a problem with the methodology and the ordinance is not working the way it should be and he has a hard time moving forward with something that we know is flawed.

The motion passed 3 - 2 with Mayor Wendel and Council Member Ilk opposing.

ORDINANCE ENFORCEMENT UPDATE: Police Chief Bush gave a power point presentation to the Council on how nuisance ordinances have been enforced since 1990.

Chief Bush reported the last 12 months they have received 1920 nuisance complaints. The Ordinance Officer handled 38% of these calls and Patrol Officers handled 62% because the barking dog complaints come in during the night.

The present ordinance enforcement issues are: (1) Insufficient staff to handle the demand for services and (2) The patrol staff currently respond to preponderance of ordinance complaints.

ORDINANCE NO. 1149 - ALLOWING THE ESTABLISHMENT OF REIMBURSEMENT DISTRICTS (second reading, first reading 2-12-08): Council Member Roppe moved to read Ordinance No. 1149 by title only for the second reading. Council Member Uffelman seconded and the motion passed unanimously. City Manager Robb Corbett read Ordinance No. 1149 by title only.

Council Member Roppe moved to adopt Ordinance No. 1149. Council Member Seley seconded. Mayor Wendel stated as he stated at the last meeting, he has a problem going from a 90 day payment

period to semi-annual. The motion passed with Mayor Wendel opposing.

ORDINANCE NO. 1150 - AMENDING CHAPTER 153 OF THE CITY OF PRINEVILLE CODE OF ORDINANCES (second reading, first reading 2-12-08): Council Member Roppe moved to read Ordinance No. 1150 by title only for the second reading. Council Member Uffelman seconded and the motion passed unanimously. City Manager Robb Corbett read Ordinance No. 1150 by title only.

Council Member Uffelman moved to adopt Ordinance No. 1150. Council Member Noyes seconded and the motion passed unanimously.

ORDINANCE NO. 1152 - EXCAVATION PERMITS: Council Member Uffelman moved to read Ordinance No. 1152 by title only for the first reading. Council Member Roppe seconded and the motion passed unanimously. City Manager Robb Corbett read Ordinance No. 1152 by title only.

Community Development Director Ricky Sites gave a brief staff report. This particular ordinance is replacing Ordinance No. 707, which was dating back to 1973. This is an update of that particular ordinance to allow us to have better control over excavation within the streets, primarily from franchises and utilities that need to get into our street and then repair them. It did not address today's standards and specifications and it basically was very vague as to what people had to do.

Mayor Wendel asked about the fee resolution.

Ms. Sites reported they do not have a fee resolution ready to present at this time.

City Attorney Carl Dutli stated that would be an amendment of our current fee resolution. Even if you passed this tonight the soonest it would take effect would be April and by then they could have the amendment of the fee resolution.

Council Member Uffelman questioned #17, it talks about violations and setting a \$500 fine. He feels this is pretty puny for the potential damage that they could cause to the infrastructure. He is wondering why the limit is so low.

Ms. Sites stated that is for violating the provisions of the ordinance. If they do not perform the work correctly that is covered by the bond that is also stated in this ordinance.

Council Member Uffelman stated the ordinance states "permit required" but if they do not get a permit and they go do their duty, they have no bond or nothing that we can fall back on, except for the \$500 maximum charge.

City Attorney Carl Dutli stated the main reason why we have gone with \$500 as our standard fine throughout our ordinances is what happens if you have a higher fine or jail time, then the City would have to pay to have attorneys appointed if someone was charged with an ordinance violation. If we keep it at \$500, it is not a crime and we do not have to appoint an attorney for someone who is accused of violating the ordinance.

Council Member Uffelman asked if we could sue the individual for the damages in addition to the fine?

City Attorney Carl Dutli stated we wouldn't be foreclosed from doing that. It is also possible if they went and did the work without a permit, they could be charged with criminal trespass or criminal mischief. They could be charged with crimes in addition to being fined under the ordinance.

Council Member Noyes pointed out a typo on #9, third line "devises" should be "devices". In paragraph 8 - Notice of Completion of Work it says that Community Development Director will be inspect and improve each piece of work. Is that the case?

Ms. Sites stated she believes that it would be her designee.

City Attorney Carl Dutli stated if you read "c" under "Definitions" it states "Community Development Director shall mean the Community Development Director of the City of Prineville or his or her designee."

Council Member Noyes stated his last question is with regard to security. When a contractor puts up a surety bond for the work that is being performed, it has been assumed in the past that they would have to make that cash or certified check payable to the City, the City makes a deposit on their accounts and holds the money until the job is complete. We have in the past had opportunities to take other measures that the State uses, where the bond can be self financed and there can be a medium. He did this for another contractor, so that at a financial institution you have a certificate of deposit that is guaranteed by bank to be held and the hold is placed on behalf of the City by the bank and it is made payable in the event the City comes calling for the note. That paragraph does not add that.

Ms. Sites stated she believes that they have that in another ordinance that they can apply to this.

Mr. Dutli stated we can add it to #b with the Council's permission with that language before the next meeting and the second reading of the ordinance.

Council Member Uffelman moved to approve the first reading with the corrections. Council Member Roppe seconded and the motion passed unanimously.

REVIEW OF RESOLUTION NO. 1059: Council Member Roppe requested a time be set for the review of Resolution No. 1059 on the SDCs.

Mayor Wendel stated he would like to build a structure for that and then come back with a timeline.

City Manager Robb Corbett stated he was going to suggested an appropriate committee to work with the issue and then staff could work with that committee to schedule a time, maybe in the next two weeks, to get together and talk about how to move forward. He suggested either the Public Works or Public finance Committee.

Mayor Wendel stated the Public Works Committee is already looking at the SDC economic stimulus proposal.

It was agreed that staff will schedule a meeting with the Public Works Committee within the next two weeks and come back to the Council with a timeline.



VISITORS, APPEARANCES AND REQUESTS: Don Wood of 395 NE Elm Street stated he had two comments about Ordinance No. 1152. He believes there are two glaring holes. One is that a great deal of the City's infrastructure is not in the street, it is in the right-of-way, which may not be in the street. He believes the Council needs to deal with that and also needs to have control over where people are digging holes in the right-of-way.

Secondly, this does not require, as he reads it, a permit for people doing boring. You could have people doing boring right through the middle of your sewer, whatever, you have no control over it the way it is set up right now.

There being no further business to come before the Council at this time, the meeting was adjourned at 7:58 PM.

\_\_\_\_\_  
Mike K. Wendel, Mayor

\_\_\_\_\_  
Robb Corbett, City Manager  
Recorder

