



Oregon's Authentic Fishing Village

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**CITY COUNCIL SPECIAL MEETING
(REVIEW OF RECORD - APPEAL (CU-2020-02))
Wednesday, July 22, 2020 - 6:30 p.m.**

I. CALL TO ORDER

Mayor Riggs called to order the regular City Council meeting at 6:46 p.m. Present were Council members Paul Daniels, Melissa Elmore, Tim Hall, Judy Riggs and Amanda Cavitt. City staff present were City Manager Geoff Wullschlager and Administrative Assistant 2 Laura Schmidt. Unknown citizens were present electronically.

Mayor Riggs reads the following statement, "The public hearing will be restricted to the record established in the previous Planning Commission hearing, or conditional use 2020-02 per GMC 18.210.060 (e)(4). If you are called on to submit oral testimony, you will be identified by the meeting host. This testimony will be restricted to the record of the initial hearing. Testimony must relate to the criteria that is the basis for the appeal. No new testimony or evidence excluded from the initial hearing will be accepted."

II. PUBLIC HEARING - REVIEW OF THE RECORD (APPEAL)
Garibaldi Planning Commission Public Hearing: (CU-2020-02)

Mayor Riggs opened the hearing at 6:48 p.m. and reads the appeal script. No objections were made with regarding to the authority of the Garibaldi City Council acting as the review body. Mayor Riggs asked if there were any conflicts of interest, ex parte contact or bias to declare. Cn. Daniels and Cn. Hall confirm they had no bias. Cn. Cavitt noted she had been asked to submit a letter in support of the structure, but it was not included in the packet and she felt she could make an unbiased vote. Mayor Riggs notes the only contact she had was when Cn. Elmore told her she would be recusing herself.

Mayor Riggs proceeds with reading the required statements as listed on the script. Mayor Riggs then asks City Manager Wullschlager to deliver his report. Wullschlager delivered his report stating the facts of the application which included: The date of application submission and official City acceptance; the publication procedures and dates for the Planning Commission quasi-judicial review; the criteria from the GMC and the Garibaldi Comprehensive Plan against which the application was measured; the dates of any continuances; any staff recommendation as submitted by City staff; any conditions as determined

by the Garibaldi Planning Commission; the date of decision by the Garibaldi Planning Commission; the dates of conclusion by final written order of the Garibaldi Planning Commission Chair; the dates of receipt of any appeals; and the noticing of a review of a Planning Commission decision (appeal).

Mayor Riggs asked if council had any questions of staff regarding the application. There were no questions. Mayor Riggs moves forward by instructing the City Manager, acting as the city Recorder, to present the final order and findings of the facts adopted in support of the decision being appealed and he does.

Mayor Riggs asks for Appellant Testimony.

Gaylord Forsman states his issues were outlined in his June 3rd letter. He notes that the comprehensive plan states that the city requires that measures be taken to minimize the impact of a resident and he did not know if that occurred. He points out that not only did the Planning Commission not accommodate him, they increased the height from 21 feet 9 inches to 23 feet and this will have an impact on the value of his property. Council did not have any questions for him.

Melissa Elmore - 613 Driftwood Avenue

Ms. Elmore states that although her thoughts and comments may appear to be against this project, they are not in totality as it is an excellent idea but felt that goals, rules and laws were not applied accordingly. She asked where it had been shown that a minimal impact would occur under goal three of the comprehensive plan. She stated a variance had been awarded to increase the height which would increase the impact. Nothing had been addressed to it being lowered and decreasing the impact.

Mayor Riggs asks for testimony in opposition of the appeal.

Jim Fanjoy the architect speaking on behalf of the school district testifies that the appeal is based squarely on whether or not section three of the Community Development Plan has been met. This section states that when non-residential users are located in a residential area, the city will require that measures be taken to minimize the impact of such uses. He responds that this has been done in several ways. In order to minimize the impact on adjacent properties, they proposed to put in a roof that is not reflective, avoiding silver and white, provide full cutoff dark sky friendly fixtures, orient the building so as not to shade adjacent properties. Also, they proposed to provide new privacy fences to decrease/discourage inappropriate pedestrian access. Additionally, they were to lower the building height by only building 23 feet instead of the 24 that would normally be allowed.

Mr. Daniels questioned Architect Fanjoy regarding footing details, erosion control plan and lowering the height of the building.

Before answering any questions, Architect Fanjoy asked for clarification from City Manager Wullschlager regarding the nature of the appeal meeting is, as he thought it was to discuss the appeals from the two appellants and not the standard

construction practices of the building. City Manager confirms that it is based off the appeals, but if the council has any questions regarding the record as established, including the drawing referenced by Mr. Daniels, they can ask those because it is on the record of what had already been presented to the Planning Commission.

Architect Fanjoy responded to the question regarding erosion control by stating that there was not one submitted as part of the plan, but the contract will have to comply with all state mandated erosion control procedures.

City Manager clarifies that an erosion control plan was not part of the criteria for this particular application, but noted that they will have to submit one once they go through the county and any state requirements for building through the universal building code that the county enforces for the building permit.

In response to Mr. Daniels suggestion to drop the building by 4 feet, Architect Fanjoy stated that it was not feasible because of the Americans with Disabilities Act.

City Manager reminded that any hypotheticals are not allowed, only what has previously been presented to the Planning Commission. The only questions can be how did or did it not meet criteria. Mr. Daniels noted he did not have any additional questions.

Cn. Hall stated he was glad to see that this facility and noted that this structure is equal to the one that is in Vancouver, Washington where his children went to school and were offered opportunities to play outside in rainy weather.

Cn. Cavitt stated she was just becoming familiar with the comprehensive plan for the city and noted that goal three has been brought up quite a bit in the appeals process and she questioned the architect how goal three was being met.

Architect Fanjoy reiterates his letter in response to the appellants and stated that it listed five different ways they had minimized the impact on the neighbors.

Mayor Riggs noted she had one question for Architect Fanjoy and begins to discuss the height of the building and asked "what would be the minimal height possible to make this building work?". Architect Fanjoy responded by giving an explanation in regards to the building height. Discussion is also had regarding the hoop height and its noted that it will be adjustable.

Mr. Forsman asks if could make a comment. City Manager and Mayor Riggs discuss if it is appropriate for him to give a rebuttal statement. City Manager stated as long as the appellant can keep their question or comments restricted to the record, and they don't go off into hypotheticals they could be permitted.

Mr. Forsman stated that he did not see where the accommodation with regard to the height was made. Originally they said 21'9 feet during the planning commission meeting and instead of lowering the height they got a variance to go

to 23 feet. Architect Fanjoy responded by reiterating what was said before, "the way the rule works is we were allowed 24 feet, and we're going to do 23. So that's our accommodation...everything else is irrelevant to that and there was no variance."

City Manager responded by stating that there's a difference between a variance application and a conditional use application and an explanation was given. Additional discussion was had with regard to the height of the building.

Mayor Riggs asked if there were any additional testimony to be given either in support or in opposition. There were none. Mayor Riggs asked if there were any clarifying questions regarding the record as established through the record transcript.

Mayor Riggs closed the appeal hearing regarding the on the Record Review of a Decision of the Garibaldi Planning Commission Decision regarding Conditional Use 2020-02 at 8:16 p.m.

Mayor Riggs stated she would ask the city council to deliberate the review and appeal under new business.

IV. CONSENT CALENDAR: Nothing Scheduled

V. OLD BUSINESS:

Vote on business discussed in Executive Session 07/20/2020 under ORS-192.660(2)(a)

Cn. Hall made a MOTION to approve of the discussion in Executive Session on 07/20/2020. Cn. Elmore seconds.

AYES: Hall, Elmore, Daniels, Cavitt, and Riggs; NAYS: None; MOTION passed UNANIMOUSLY.

VI. NEW BUSINESS: Consideration Planning Commission Decision CU 2020-02

City Manager explained the three options the council had to choose from.

Cn. Hall made a MOTION to uphold the Planning Commission's findings. MOTION died for a lack of second.

Council had a discussion regarding the height of the building and the ADA standards. Architect Fanjoy at the request of the council stated clarifications regarding the height and said their intent was to build a building that was 21'9". They requested the leeway in the event there was "some sort of minor construction error".

Cn. Daniels made a MOTION to remand the decision to the Planning Commission with a stipulation the building height be a maximum of 21 feet.

MOTION died for a lack of second.

Cn. Hall again made a MOTION to uphold the Planning Commission's findings. MOTION died for a lack of second.

Mayor Riggs discussed with City Manager a question regarding process.

Cn. Daniels asserts his belief that the design could be lowered and everyone will be happy.

Cn. Daniels again made a MOTION to remand the decision to the Planning Commission with a stipulation the building height be a maximum of 21 feet. Cn. Cavitt seconded.

AYES: Daniels, Cavitt, and Riggs; NAYS: Hall; RESCUSAL: Elmore; MOTION passed with 3 AYES, 1 NAY, and 1 RECUSAL.

Mayor Riggs stated the application will be remanded to the Planning Commission. City Manager explains the next steps in the process.

Mayor Riggs noted there was going to an executive session but that it would be held under an open forum. She stated, "We've been talking about censure and that the council has the right to make and enforce its own rules and ensure compliance with those laws. So, what we need to decide tonight if we are going to move forward to investigate the actions." She asked for a motion.

Cn. Daniels made a MOTION to investigate Tim Hall. Cn. Elmore seconded.

Cn. Hall made a point of order and stated that he felt the investigation was in retaliation for the recall of Paul Daniels and the exposure of the SDC problems. Additionally, he stated that it was because of his decision to run for Mayor in order to restore trust in the local government. Mayor Riggs responded by saying he was wrong and that she did not plan to run for Mayor. Cn. Daniels called for a vote on his motion.

AYES: Elmore, Daniels, Cavitt, and Riggs; NAYS: Hall; MOTION passed with 4 AYES and 1 NAY.

Cn. Hall requested more specificity regarding the investigation and informed them that he had contacted his attorneys at Markowitz and Herbold and they will be in contact regarding these allegations that are being put forth by members of the city council that "are vindictive and petty".

Mayor Riggs stated "We have not gathered any information as a body of the whole yet, Councilman Hall." and Cn. Hall responded "You're talking about censure but you have not identified what I am being censured for."

Mayor Riggs referenced Section 24 of the Charter and Cn. Hall requested she read it. Mayor Riggs responded by reading Section 24 (9), "no council member shall directly or indirectly attempt to coerce the manager or candidate for the Office of

Manager in the supervision, appointment or removal of a city employee or in administrative decisions regarding city property or contracts. Violation of this prohibition is grounds for removal of the council member from office by a majority of the council after a public hearing. In council meetings, councilors may discuss or suggest anything with the manager relating to city business." She goes on to say, "I have repeated the rules in the city charter and some of the city code." She continued by saying, "Under 2.05.040, decorum and order, I did read this two months ago, councilors shall preserve order and decorum during council meetings, and shall not by conversation or other action, delay or interrupt the proceedings or refuse to obey the orders of the presiding officer or rules of council. Councilors shall when addressing staff or members of the public confine themselves to questions or issues then under discussion, and shall not engage in personal attacks, shall not criticize the motives of any speaker and shall at all times while in session or otherwise conduct themselves in a manner appropriate to the dignity of their office." Mayor Riggs notes that she had read these before.

Cn. Hall responded by saying, "I hope that in this investigation that instead of innuendo or prejudice that the investigation actually provides the citizens of Garibaldi with examples, clear examples, of what I'm being censured for."

Mayor Riggs responded by saying, "yes, we will be doing that through emails and documentation." Cn. Hall interrupts by saying, "I would like to ensure that my attorneys have all of these documents ". Mayor Riggs finished by saying, "and we will be having a public hearing. And yes, you will be getting copies of the documentation." City Manager interjects that we would provide those as long as our attorney agrees to that.

Cn. Hall commented, "I reserve the opportunity to provide information to defend myself against these false accusations." and "I also reserve the right to have citizen witnesses available to discuss the treatment I have received at the hands of the city manager and the council."

Mayor Riggs assured him he would get the opportunity to defend himself as that is what the public hearing is about. City Manager again stated that as long as the city attorney agrees to that process.

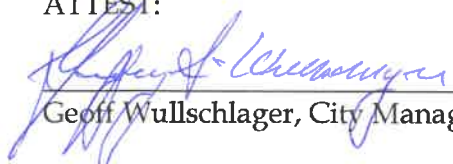
VII. ADJOURNMENT

Mayor Riggs adjourned the Special City Council Meeting at 9:07 p.m.



Judy Riggs, Mayor

ATTEST:



Geoff Wullschlager, City Manager

Transcription: Laura Schmidt