

MINUTES–CITY OF ASHTON

SPECIAL CITY COUNCIL MEETING

Wednesday, May 24, 2017

7:00 p.m.

714 Main (North Entrance)

*The purpose of the Agenda is to assist the Council and interested citizens in the conduct of the public meeting. Careful review of the Agenda is encouraged. Testimony from the public will be solicited for any item or issue listed under the category of **Public Hearings**. The Mayor will not normally allow audience participation at any other time. Idaho Law prohibits council action on items brought under this section except in an emergency circumstance.*

CALL TO ORDER & WELCOME

In Attendance: Teddy Stronks, Teresa Hansen, Becky Harrigfeld, Tadd Atchley and Jerry Funke.

Also in attendance: City Clerk Stegelmeier, P&Z Administrator Tom Cluff, Deputy Clerk Warnke, Jan Albertson and Sheryl Hill.

Mayor Stronks opened the meeting at 5:59 pm

1. AMEND AGENDA:

Any items added less than forty eight (48) hours prior to the meeting are added by Council motion at this time.

A. **NEW BUSINESS/PETITIONS: B. Bid for Heating/Cooling City Bldg. –City Clerk Stegelmeier**

Councilwoman Harrigfeld made a motion to amend the agenda to add B to the New Business. Councilman Atchley seconded the motion. The motion passed unanimously.

2. NEW BUSINESS/PETITIONS:

Each speaker will be allowed a maximum of 5 minutes unless repeat testimony is requested by the Mayor/Council.

A. Sludge Removal Update – Marvin Fielding, City Clerk Stegelmeier

City Clerk Stegelmeier went over the update from Marvin in the packet. Councilman Funke expressed his opinion that if a company bids on a project like this, they need to have bid for unforeseen equipment problems. Councilwoman Hansen explained that at the meeting they discussed the tires that had been flattened which cost \$1500 dollars. Councilman Funke explained his point that equipment failure should be part of what you plan on in bidding.

B. Bid for Heating/Cooling City Bldg. – City Clerk Stegelmeier

City Clerk Stegelmeier explained that Judco had bid on updating the heating and cooling for the Archives/Police building. The Council directed City Clerk Stegelmeier to get a bid from Housley also to make sure that Judco is giving us a good price. Have them bid on the same kind of system so that the comparison is fair.

3. PUBLIC HEARING: (Persons wishing to comment are required to register on the applicable sign in sheet prior to the hearing. Each speaker will be allowed 3 minutes unless repeat testimony is requested by Mayor/Council.)

A. Text Amendment to the Development Code – Accessory Building as a Commercial Office or Shop

Mayor Stronks asked City Clerk Stegelmeier if the proper notice had been given. City Clerk Stegelmeier replied that it had. He then asked the Council if they need to declare a conflict of interest. No conflict was declared. Mayor Stronks then asked the City's P&Z Administrator, Tom Cluff, to give the Administrator's Report.

i. P&Z Administrator Report – Tom Cluff

Tom explained that the Council should have the Planning & Zoning Commission's Findings of Facts and Conclusions of Law on this amendment as well as the Administrator's Report in their packet. He then summarized the Administrators report for the Council. He explained

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that Mr. Ron Palmer had come to him to discuss a shop he wanted to build on his property. The shop is larger than is allowed by the code in the Lower Density Residential Zone. The question then becomes – Is it better to rezone the property or is this sort of building something the P&Z is comfortable in that zone? He explained that the P&Z Commission felt that this sort of accessory building is something that they are comfortable with having in low density residential. This is the new language of what they want to allow in the zone. A Class II permit will be required but that it can be permitted in that zone. If someone wants an accessory building right now in that zone they have to stay under 1000 square feet. With the new text the building would have to have a Class II permit approved which would require everything being heard on a case by case event. Tom explained that the text amendment has to be in line with Comprehensive Plan. He explained that there are residential goals, commercial goals and industrial goals. In their findings, the P&Z Commission picked the goals that are applicable to this request and recommended the Council approve this text amendment to the code. The P&Z finds that taking each application on a case by case basis is better than writing a blanket rule for all buildings of this type on all of the lots in the City.

Councilman Funke asked if there was any mention about granting a variance in that situation. Variance is about physical characteristics of the property and granting it to give a new right to that applicant. You cannot give them a variance to give them more rights than others. Councilman Tadd talked about text amendment at the county level. He doesn't have a problem for storage but how do we know that someone will be in it 10 hours a day, grinding on trailers, etc. Tom explained that would be the purpose of the class II process and look at it to tell them what uses they would have. They would could tell them that they can't use these certain tools or give them hours of operation. P&Z could give them conditions of use to make it compatible with the neighbors. The can impose conditions and then revoke a permit if those conditions are not met. Councilwoman Hansen asked Tom to explain what he meant by the shop must accompany a house. He explained that the shop has to be the secondary use of the property, not the primary use of the property. This is a residential zone and the primary characteristic of the zone is residential. The code reads that the shop is an accessory building so someone couldn't just buy a lot and build a shop – they have to have a home on the lot. The P & Z felt that in Ashton, residents are used to a house being accompanied by a shop. That having a business in an accessory building doesn't bother residents. The size doesn't seem to be such an issue. The code now allows for a 1000 square foot accessory building/shop. The amendment will allow for any size as long the P&Z Commission feels it fits the characteristics of the area in which it is being built. Councilwoman Hansen asked if there is an explanation of what is commercial use. Both storage and working in the shop are considered commercial use because it is a home based business. There is a standard land use manual that lists these uses and the new P&Z Administrator Kyle Baldwin has access to the manual. The manual has a breakdown of land uses. We are talking about different intensities but not different uses. Intensity can be used in the Class II process and that can effect what conditions are imposed. Councilwoman Hansen also asked about the height of the building. Tom said that height is limited to 35 feet by the code and this text amendment will not change that limit. Mayor Stronks thanked Tom.

Mayor Stronks asked Ronnie Palmer if he would give his statement.

- ii. Statement from the Applicant – Ronnie Palmer
Ron Palmer said that his brother & he purchased a two acre lot. His parent's house will be

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fronting Baker Road. The shop he would like to build would be in the far west corner of the lot. He would like to build a single storage shop to store materials and tools, etc. He will not be building anything at the shop. He will have his business office at the shop. He doesn't need a sign – that is not how they get business - so it will just be the office there. They just need a place to have an office and store their tools and materials. There are several residences where the owners business is ran out of the home and shop now. He supposes that if he built the house and the 1000 square foot shop that he would use it the same as the other businesses but he has two acres so he would like to build a bigger shop – you know everyone wants a bigger shop. But he does need the space as right now he is renting two storage units and an office. This is his intent for that property. Councilman Atchley said that is probably not any different than Ronnie's brother is doing with his garage. Ronnie said that is true and added that ten years ago he was running it out of his house – before he started leasing the office and storage units. Councilman Funke asked if the old house will go with the property and what about the old sawmill. Ronnie replied that he did not purchase the house – Ben Forbush's son still owns the house and the little shed close to the house. He bought the property where the saw mill was and it will be removed and would like to put the shop in the back corner. Mayor Stronks thanked Ronnie.

iii. Statements from the Public

Mayor Stronks opened the meeting for members of the public to speak. He called the first on the list. He asked that they state their name and address. He reminded them that they had three minutes to speak.

Jan Warnke, Planning and Zoning Secretary and Deputy Clerk for the City of Ashton. Jan wanted to clarify something concerning the last time the P&Z Commission (when Councilwoman Harrigfeld was on the Commission) went through the code. At that time the accessory buildings could not be over 10 feet and she hadn't thought about that until Councilwoman Hansen asked her question earlier in the hearing so maybe that needs to be checked. Jan's comments have nothing to do with current administrator, current commissioners or Mr. Palmer. Her concerns have to do with future issues that may come up. The more she thinks about the code change, the more it scares her. The City will not always have a very good professional administrator like Mr. Cluff and someone capable like Mr. Baldwin who will take his place to interpret the code. The code change requires a Class II permit for the use of any accessory building as a commercial office or shop in the residential zones. This means that the applicant will have to come before the Planning & Zoning Commission for a public hearing. Her concern is that with code language being so vague that if the future administrators and/or commissions are not as familiar with the code that this may turn into a big mess. That also puts a lot of responsibility on a future Planning & Zoning Commission that may not even understand the code. They may have trouble interpreting and/or may not know they can add conditions like Mr. Cluff had mentioned. She is asking, as part of the staff that works with this every day that they not rush to a decision. Please take your time and think about the possible ramifications of this change. I feel there may be better alternatives. Alternatives like adding a section for special use permits with specific language or making a new zone that may be appropriate. Mr. Palmer's application would fit with a special use permit according to the training that the City just had from Jerry Mason.

Jan Albertson, 261 Walnut, Ashton. Upon further investigation she has found that Mr. Palmer

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knew about the code before purchasing the property. So why did he continue purchasing the land knowing what the codes were? Is Mr. Palmer going to be living on the property? And should he be living on the property to go with the comprehensive plan. To amend this code you should not do it just for just one person as I keep hearing about. This amendment to the code is not in full agreement with me or most of the people in the town to just accommodate for one person or two people or for the businesses. Mr. Cluff said that this code amendment would apply on a case by case basis for each situation that would arise. I don't believe that this would ever happen and you can't discriminate from one person to another. Like I keep hearing at these public meetings – we cannot tell people what they can and cannot do with their property. But if they are building inside the City Limits then there are codes, there is a reason why – to limit what you can and cannot do – and that is where we can put all the limitations. If you pass this code amendment know that not only will it benefit Mr. Palmer but any other developer that comes to this area and sees that they can do whatever they want to, almost. And so we can end up with bigger and bigger buildings and then there would be no end to this. Like Sheryl Hill stated at one time: She would be glad to work with Mr. Palmer in finding him an alternative building to store his supplies and equipment for his business without having to build. I am just afraid that if we do amend this code that you are going to open a can of worms and possibly legal problems that you will not be able to control or get out of. You will also destroy the whole reason that people like to live here in Ashton and the values it holds. Again, I disagree with this amendment and I am not personally against Mr. Palmer. Thank you.

Sheryl Hill, 238 Idaho Street, Ashton. I am opposed to this text amendment for many of the reasons that have already been expressed. I think Jan did a wonderful job of talking about many of the potential problems that could be created by this text amendment. It originated to address a very specific issue and frankly, I am a bit confused and I think the P&Z Commission was confused as to why Mr. Palmer is speaking as an advocate. You would be considering his particular situation only if this were to become part of the development code and then he would be to come back to the Planning & Zoning Commission asking for a Class II permit. I think that this will make the development code extremely confusing. The language is vague. The definition of accessory building is: buildings and uses that are customarily associated and clearly subordinate to a principle building or use that exists on the same lot. Accessory buildings was intended for a home business like a hairdressing shop – and we have several of those in town. It wasn't intended for a 6000 square foot building in your back yard which is what this would be. Now I understand the P&Z Commission thinks that a two acre lot, which is what Mr. Palmer has, is appropriate for a building that large and it may be. But in the future, as Janalee says, when you have someone asking for a similar building, you are very limited by what you can do in the code. I am skeptical, I'm afraid, of the impression Mr. Cluff has given you tonight that you can just say well you can do this, you can do that. You have to follow the Development Code. There are restrictions based on noise, there are very specific restrictions but it doesn't say you can do this or you can't do that. I do think that there is a good alternative. That was introduced by Mr. Cluff to the Commission at the same time he introduced the language that the P&Z Commission approved. They didn't really consider this. It makes an exception to the home based business, the size of home based business. I think this would be probably appropriate for the situation and much more limited. It would not open the can of worms that I think that this change will open. I am just asking you to take the time to, first of all, to review the transcript

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of the P&Z Commission meeting. The P&Z Commission was taxed with determining whether this change complied with the Comprehensive Plan and after they voted, (and I can hear my time is up) after they voted, one of the Commissioners actually asked “What is the Comprehensive Plan?” That, to me, voided the whole discussion, frankly. They need more guidance on what the Comprehensive Plan is before they make decisions like this.

Mayor Stronks thanked everyone for their time and testimony.

Mayor Stronks asked if there was anyone else who would like to speak.

Mayor Stronks closed the public hearing at 7:40

iv. Discussion by Council

Mayor Stronks opened up the discussion to the Council. Councilman Atchley asked Tom Cluff how a Special Use Permit would work. Tom explained that it would be a permit to allow a use in that zone that is not allowed in that zone. He went on to explain that a special use permit would open the door to more ideas than the code amendment would but it would work almost like a Class II Permit in that you would have public hearings and impose conditions. Councilwoman Hansen asked what which is more open. Tom can't say what would be stricter without it being written out. Right now, a Class I is an administrative approval (or Administrator approval) and a Class II is a P&Z Commission or City Council approval. It would depend on the application. Councilman Atchley inquired that if a special use permit was approved for Mr. Palmer, can that set a precedent for what you can or can't allow in the future. For example – if someone else came in who wanted a 6000 square foot shop, could my answer be that because you live on 2nd Street and he lives on Baker Road so you cannot have that shop? Tom explained that Tadd's answer would have to be tied to a reasonable explanation. It can't just be what street you live on but it could be tied to the size of the lot. The explanation has to be reasonable whether it is a Class II permit or a Special Use permit. Giving them a permit for a 6000 square shop doesn't give them rights for others to have a 6000 square foot then evaluate the differences when you give the permit. If everything is the same then you need to treat it the same but if size of the shop is the only thing that is the same, then you will evaluate those differences when you get the permit.

Sheryl explained that this is where she gets very confused. When the City had the hearing on the vacation of the Johnson Subdivision, there were many comments that were based on the Comprehensive Plan. The response from the Administrator (Tom Cluff) was that if it is not in the Development Code, it is not legally binding. The Development Code is the legal representation of the intent of the Comprehensive Plan. So it would seem to me that if someone said that I want a shop on Second Street and you said Second Street is not appropriate – that would not be legally supported – if I am understanding what we have been told previously. You have the Development Code in front of you, it tells you what you can and can't allow. I don't understand that you are being led to believe that you can make exceptions if they do not already exist in the code.

Tom explained that the Development Code gives you the ability to attach conditions of approval to Class II permits. Those conditions have to be based on reasonable and supportable evidence on the record that is pertinent to the application. So when you attach a condition of approval or when you give a reason for denial. When you give your reason for

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the decision you make – that's what is going to support your decision. That and the Criteria in the Development Code. If you have clearly stated in your Development Code that everyone can have 6000 square foot shops regardless, then you are stuck with everyone approving 6000 square foot shops. But if you follow the Class II process, the P&Z Commission is going to evaluate the applications based on its merits and its compatibility with the surrounding property using the standards in the Development Code. Then each permit is given conditions. If they are reasonable conditions then they will be fine.

Councilwoman Hansen likes rules but thinks that there are sometimes situations that need some sort of special treatment. Maybe there is the need for a way to treat some of these different situations. Deputy Clerk Warnke explained that the reason she thought of a Special Use Permit was because when Jerry Mason came to do the training he used an example of how a special use permit would work and a perfect example is Mr. Palmer's location because across the street is County and not zoned and the street is a farm to market road and it could be permitted because you would not be going through a residential area. Those are the reasons Deputy Clerk Warnke thought of the Special Use Permit alternative.

Councilman Funke asked about the alternative that Sheryl mentioned in her testimony. Could Sheryl read those to the Council? She said that if we had minutes from March 2nd meeting then she would have it. It was offered to the Commission at the same time as the language the Council is currently hearing. It was a change in section 17.64.0304 under exceptions. The additional language read that "The Commission may approve exceptions to the above floor area limits on a case by case basis. These exceptions shall require a Class II permit. The Commission may, at its discretion, attach conditions to the approval to any exception if, in its reasoned judgment, the conditions can adequately mitigate the proposed use. If the commission finds that the proposed use is not compatible with the zone or the established land uses in the neighborhood it shall deny the application." To her it seems very similar except it would not open the door to putting commercial properties in residential neighborhoods. It is clear in the Comprehensive Plan that we have zones to keep the separation between commercial, industrial and residential properties. Councilwoman Hansen expressed her opinion that it is still opening it up just like the text amendment tonight. Councilwoman Harrigfeld thought it was a little more specific than tonight's amendment. Councilman Atchley asked Tom Cluff why the Commission chose one over the other. Tom said the P&Z felt the one tonight was simpler. The City Council asked City Clerk Stegelmeier to get them the minutes from that meeting. Tom Cluff said that the Commission thought that language being considered tonight was simpler, still allowed the same thing and the process was the same. Councilwoman Harrigfeld said that tonights may seem simpler but the other one makes it so that a lay person can read it and understand what may be required. Councilman Atchley said that he likes it but he might like the other version better because it is more specific then someone can read the code and do the restrictions.

Ron Palmer said that he wants to follow the code and welcomes the idea of doing it whatever way the Council/City says. He welcomes the idea of not deciding tonight. He is open to other suggestions also. He just wants to do it right.

Mayor Stronks said it sounds like you want to table it and make a decision another time. The Council discussed taking time to read the minutes, etc.

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Councilman Funke made a motion to table the decision to the next Council meeting on the 14th. Councilwoman Harrigfeld seconded the motion. The motion passed unanimously.

4. ADJOURNMENT:

Councilwoman Hansen made a motion to adjourn. Councilwoman Harrigfeld seconded the motion. The motion passed unanimously.

NEXT MEETING

- ♦ Regular Council 7:00 p.m. – Wednesday, June 14, 2017, Council Chambers, Ashton City Building – 714 Main, Ashton. Questions concerning items appearing on this Agenda or requests for accommodation of special needs to participate in the meeting should be addressed to the Office of the City Clerk or call 208-652-3987.

Attest

Cathy Stegelmeier
City Clerk

Theo R. Stronks
Mayor