

REGULAR MEETING MINUTES
SISTERS CITY COUNCIL
520 E. CASCADE AVENUE
JANUARY 28, 2016

MEMBERS PRESENT:

Chris Frye Mayor
Nancy Connolly Council President
David Asson Councilor
Amy Burgstahler Councilor
Andrea Blum Councilor

STAFF PRESENT:

Andrew Gorayeb City Manager
Steve Bryant City Attorney
Patrick Davenport CDD Director
Joe O'Neill Finance Officer
Kathy Nelson City Recorder

ABSENT:

Paul Bertagna PW Director

I. CALL TO ORDER/PLEDGE OF ALLEGIANCE

The meeting was called to order by Mayor Frye at 7:08 p.m.

II. VISITOR COMMUNICATION - None

III. CONSENT AGENDA

A. Minutes - None

B. Bills to Approve

1. January Accounts Payable

C. Liquor License Application – La Magie Bakery

Councilor Asson moved to approve the consent agenda. Councilor Burgstahler seconded the motion. The motion carried unanimously.

IV. STAFF REPORTS - None

V. COUNCIL BUSINESS

A. Public Hearing and Consideration of a Motion to Approve a Modification to a Previously Approved Subdivision Plat (SUB 15-01)

Mayor Frye read from the public hearing script for MOD 15-06, a request to modify certain aspects of SUB 15-01, a previously approved tentative subdivision plat. He stated the public hearing would enable the Council to review the Planning Commission decision and approve, amend, remand or deny the application. He called the hearing to order. He described how the hearing would be conducted and how to provide testimony. He asked for disclosures from the City Council and there were none. There were no members of the audience that wished to challenge the ability of any member of the Council to hear the matter. He asked for the staff report to be presented.

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Director Davenport provided background information for the ClearPine development explaining it was slated to construct 77 single family dwellings as well as two acres of multi-family zoned property. He provided a timeline of previous land use entitlements noting the latest was the Planning Commission recommendation for approval of MOD 15-06 to modify a previously approved subdivision plat (SUB 15-01). He stated a 2001 development agreement between the City, Sisters School District and Deschutes County, which assumed the property would be developed for industrial use, required 50 foot setbacks for buildings 20 feet and under and 100 foot setbacks for buildings over 20 feet tall. He stated the request was to modify the original setbacks, adding that even though they had expired in 2008, were still being carried forward to current land use applications. He pointed out the lots in question and explained the current property owner and an adjoining property owner had arrived at a mutually acceptable solution which included:

- 22 foot setback maximum height restriction on lots 35-38
- 38 foot setback for all structures on lots 30-36
- 25 foot setback for all structures on remaining lots along the northern property line
- 50/50 cost sharing for a fence to be built along the property lines of lots 30-36 and Lee property in the Trapper Point subdivision. Details for the fence will be determined by the developer and Mr. Lee within 30 days of Council's final approval.
- All conditions of approval specified in the previously approved application of SUB 15-01, not modified by the application, remain in effect.

Mayor Frye asked if it was appropriate for the Council to make a decision on the matter and **City Attorney Bryant** confirmed it was. **Mayor Frye** asked if the City had made changes to the setbacks in 2007 and **Director Davenport** replied the City had not and the same setbacks had been in since the original development agreement, even after it expired. **Mayor Frye** asked why one of the Planning Commissioner members voted against the resolution. **Director Davenport** replied the vote was more in protest of what the Planning Commissioner viewed as a lack of clarity in the City's Development Code as it relates to buffers between development in the city and rural areas. **Mayor Frye** asked if the negotiations between the developer and adjacent property owner were completed and **Director Davenport** replied they were still working out final details. **Mayor Frye** asked if the new setbacks provided an advantage to the builder and **Director Davenport** replied they provided a larger footprint in which to build homes.

Mayor Frye asked if the applicant would like to testify.

Peter Hall, 1195 NW Redfield Circle, Bend, OR

Mr. Hall stated he was the managing partner of Three Sisters Partners, developers of the Clear Pine subdivision. He clarified that the setbacks had never been changed. He stated he was mostly in agreement with the recommendation from the Planning Commission and stated he felt the terms of the cost sharing agreement for the fence had been determined

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with each party paying for 50% of the cost. Clear Pine homeowners association would be responsible for maintaining the fence.

Mr. Hall stated Mr. Lee wanted view shed relief by limiting the heights on four homes to 22 feet high. He stated although he had plans approved for both alley and front loaded garages, his preference for setbacks would be 25 feet across the entire development to create a standard buffer and allow garages to be front loaded.

Councilor Connolly questioned whether there was a mutually acceptable agreement between Mr. Hall and Mr. Lee or not and **Mr. Hall** replied it was his preference to have a uniform 25 foot buffer across the back of the property. **Councilor Burgstahler** asked if there was any issue with the City requiring a different setback for lots 30-36. **City Attorney Bryant** replied the Council needed to be able to justify their decision in what was allowed with the applications. He added if the Council wanted to create a standard setback it could start with this decision or wait and consider the entirety of the city when making a decision. He stated if a situation with the same circumstances arose, there would likely be an expectation it would be handled in the same manner.

Mayor Frye asked if anyone wanted to testify in support of the application and there was no one. He asked if anyone wanted to testify in opposition to the application.

Meriel Darzen, 222 NW Irving, Bend OR

Ms. Darzen identified herself as an attorney representing Mr. Lee. She pointed out Mr. Lee's property relative to the Clear Pine development on a map. She stated the setbacks should remain the same and her client had been trying to work with Mr. Hall. She noted the lots for the 77 residential units were small, by the developers own choosing, and that was why he was interested in the shorter setbacks. She voiced disappointment that Mr. Hall was now backing off on the 38 foot setback for lots 30-36 as previously discussed. She stated the 38 foot setback was not an arbitrary number noting it matched the setbacks for the Sun Ranch development which borders the Clear Pine development. She stated if Mr. Hall wanted uniformity, her client would agree to a 38 foot setback across the entire northern edge of the Clear Pine subdivision. She confirmed her client would agree with the Planning Commission recommendations.

Francis Duane Lee, PO Box 1657, Sisters, OR

Mr. Lee identified himself as the owner of the property in the Trapper Point subdivision. He stated he had owned the property since the mid 1990's. He noted he had participated in a law suit against the City that eventually created the 50 foot and 100 foot setbacks with the 20 foot height restriction. He stated he would have preferred having a light industrial building as opposed to having seven residential units back up to his property. He stated he had heard when he arrived this evening that the applicant had met with the City Manager and now the setback was going to only be 25 feet for all the residential units. He stated he was upset that

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he has had to continue to discuss the issue with Mr. Hall as Mr. Hall could adjust his plans and not try and build so many homes on the property. **Mr. Lee** stated his home site was an old mill and log pond and was still home to many critters. He stated he wanted to keep a more natural setting and was willing to accept the 38 foot setback along his property border but if it was anything less, he would pursue a legal challenge.

Mayor Frye asked if anyone wanted to provide neutral testimony and there was no one that did. He asked if anyone wanted to provide rebuttal testimony on either side of the argument.

Peter Hall, 1195 NW Redfield Circle, Bend, OR

Mr. Hall stated his development was not being crammed into a small area as he was building 77 residential units over 17.5 acres, which provided a density of only 4.1 homes per acre. He stated the Development Code allowed density to be from 3 to 8 homes per acre. He stated the original Sun Ranch plat only indicated a 25 foot buffer and at some point the Planning Commission had added the additional 13 feet to create a 38 foot setback.

Mayor Frye asked the applicant if he would like to provide a final statement and **Mr. Hall** declined. **Mayor Frye** asked if anyone would like to keep the record open and no one requested it be kept open. **Mayor Frye** closed the public testimony.

Director Davenport explained the specific conditions of approval discussed during his presentation were the starting point for the Council in determining if they wanted to approve, amend, remand or deny the application. He stated since the Council had originally approved the 2001 development agreement the Council was the appropriate body to make the final decision on the Type IV application.

Mayor Frye asked if there were further questions from the Council. **Councilor Asson** asked if there was a mutual agreement between Mr. Hall and Mr. Lee or not. **Mayor Frye** stated he understood there was a begrudging agreement but it was still Mr. Hall's preference to change all setbacks to 25 feet. **Councilor Asson** asked if the points provided during the staff presentations were generally agreed to at the Planning Commission meeting and **Director Davenport** replied they were. **Councilor Burgstahler** questioned if noticing requirements had been followed and **Director Davenport** replied everyone had been properly noticed. **Councilor Blum** asked for clarification on the 38 foot setbacks at Sun Meadow Ranch and **Director Davenport** replied the 38 foot setback requirement was part of the original zoning and had never changed.

Mayor Frye informed the Council the 120 day review time-frame requiring the City to make its final decision on the application was this evening unless the applicant waived his rights to the requirement. **Mr. Hall** did not waive his right to the requirement. **Mayor Frye** closed the public hearing.

*Councilor Connolly moved for the City Council to approve file Mod 15-06 as written.
Councilor Asson seconded the motion. The motion carried unanimously.*

**B. Public Hearing and Consideration of an Appeal to the Planning Commission
Decision to Approve an Extension (EXT #15-01) to an Approved Subdivision
Plan (SUB #10-02)**

Mayor Frye read from the public hearing script for appeal AP 15-03 on the November 19, 2015 Planning Commission approval of an extension (Ext 15-01) to an approved tentative subdivision plat (SUB 10-02). He stated it was a de novo hearing that allowed all aspects of the application to be re-evaluated as if it were a newly submitted application. He called the hearing to order and explained how the hearing would be conducted and how to provide testimony. He asked for disclosures from the City Council and there were none. There were no members of the audience that wished to challenge the ability of any member of the Council to hear the matter. He asked for the staff report to be presented.

Director Davenport entered a letter from Michael Robinson of Perkins Coie, the attorney representing the appellant, Pinnacle Alliance Group LLC. He explained Pinnacle Alliance had appealed the Planning Commission decision to approve an extension of the McKenzie Meadow Village (MMV) subdivision. He provided a summary of the land use entitlements affecting the property, noting the August 12, 2015 City Council decision to uphold the June 18, 2015 Planning Commission approval for a master plan modification (MOD 15-01) had been appealed to the Land Use Board of Appeals (LUBA) and was still active. **Director Davenport** provided an overview of the previous extensions granted to McKenzie Meadow Village. He explained the review procedures and stated the Council could approve, approve with conditions or deny the extension request based on the applicable standards and criteria.

Director Davenport stated the appellant had not provided any evidence that the Planning Commission should not have been able to make the decision nor had the appellant provided any evidence that the Planning Commission findings were inadequate or internally inconsistent. **Director Davenport** provided a recap of staff responses to the appellant's statements in a letter dated December 3rd providing the grounds for the appeal.

1. The Planning Commission should not have granted the extension request because the City had already granted the maximum number of extensions for the subdivision for the maximum duration of time as allowed by the Sisters Development Code, Section 4.3.400F

Director Davenport replied staff did not agree and provided a review of the previous extensions granted. He noted the appellant did not specifically reference which section of the Development Code was not followed and had not demonstrated how the Planning

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Commission had erred in approving the extension nor how the administrative extension was in error. He provided an overview of the Development Code section pertaining to extensions.

2. The Planning Commission should not have granted the request because the extension request could not have been approved without approving an extension to the master plan.

Director Davenport replied staff did not agree as the Planning Commission had been made aware of the administrative decision, a Type I administrative decision, during its consideration of an extension request to SUB 10-02.

3. The Planning Commission erred by adopting findings in support of the decision that are inadequate and internally inconsistent because they purport to justify approving the extension but incorporate by reference the Pinnacle Alliance letter in opposition to the extension.

Director Davenport replied staff did not agree stating the letter of opposition was included as an attachment to the staff report. He stated the applicant had requested the extension due to the fact that the initial phase of development was still under appeal to a higher body (LUBA). He stated that was a sufficient reason to grant the extension. He stated the appellant did not provide any evidence on how the Planning Commission findings were inadequate or internally inconsistent.

4. The City gave inadequate notice of the decision by failing to provide Pinnacle Alliance Group with a notice of the decision by failing to provide Pinnacle, a party to the Planning Commission proceedings, a copy of the decision until two days before the appeal deadline, and 11 days after the decision was mailed to others. The City's delay prejudiced Pinnacle's substantial rights because the City failed to provide reasonable notice and deprived Pinnacle of an opportunity to prepare and submit its argument in the appeal. Pinnacle relies upon its letter in Exhibit 1 to further explain these issues. Pinnacle also reserves the right to present additional argument and evidence at the de novo City Council hearing on this matter.

Director Davenport admitted that the appellant's assertion of late notice was correct due to a clerical oversight but it did not deprive the appellant of its ability to appeal the decision of EXT 15-01. He explained the appellant had substantial time between submitting the appeal on December 3rd, 2015 to submit additional arguments in support of their appeal. He reported a letter from the appellant's attorney was received earlier in the day via email. He added that since it was a *de novo* hearing, the appellant had the opportunity to fully state the justifications on why the Planning Commission decision should be overturned and no one had attended the hearing to do so or submitted any evidence to support their assertions.

Commission decision (EXT 15-01) should be overturned and MMV be directed to file for a

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new subdivision plan, it was staff's recommendation the Council not reject the Planning Commission decision and not require the applicant to file for a new land use application. He stated staff felt the Planning Commission decision had been made in compliance with the Development Code.

Director Davenport stated the appellant's attorney asserted there had not been adequate evidence provided to show there had been no changes to the applicable Development Code provisions on which the approval had been based. He reported there had been no changes to the Development Code in effect and entered a copy of the applicable provisions into the record.

Councilor Asson asked if the open LUBA appeal had any bearing on the Council's decisions and **City Attorney Bryant** replied it did not. **Mayor Frye** asked if the responses provided by staff to the issues raised by Pinnacle Alliance were correct and **City Attorney Bryant** replied the responses from staff had been in order. **Mayor Frye** asked if the noticing requirement, which staff admitted had been delayed, was a problem and **City Attorney Bryant** replied the appellant took advantage of the appeal opportunity and so that issue had been rectified. **City Attorney Bryant** noted the appellant had requested the record remain open for seven days for written testimony and then allow another seven day period as an opportunity to respond to submittals received during the second seven day period. He stated the record should remain open until 2:00 p.m. on February 11th.

Mayor Frye asked for public testimony. The only one to testify was the applicant's attorney

Laurie Craghead, PO Box, Bend, OR 97708

Ms. Craghead introduced herself as an attorney representing MMV in the matter. She stated the Laura Cooper of Brix Law was also an attorney for the matter and she had been unable to attend the hearing. She stated the argument from the appellant that the number of staff extension had been exceeded was impermissible as it was a collateral attack on the 2014 extension and therefore moot. She asserted the reasons for the extensions were all legitimate per the Sisters development Code. She requested the record remain open for an additional seven day to submit written testimony with additional time to respond to those submittals.

Staff had no further comments and **Mayor Frye** asked for questions of clarification from the Council.

Councilor Connolly asked City Attorney Bryant to explain the discussion about the first staff extension. **City Attorney Bryant** explained that when the Council takes action during a quasi-judicial hearing there was an appeal period and once that appeal period had passed an appellant couldn't go back and assert it had been invalid.

Mayor Frye informed the Council the 120 day review time frame requiring the City to make

a final decision on the application for EXT 15-01 was April 1, 2016. **Mayor Frye** stated the hearing was continued until the regular meeting of the City Council on February 11, 2016.

C. Discussion and Consideration of a Motion to Accept Public Improvements for Sky Gate Subdivision

Manager Gorayeb stated Director Bertagna had reviewed and signed off on the checklist for completion of the public improvements for the Sky Gate subdivision, an affordable housing project developed by Housing Works. He explained this was the final step the City took prior to accepting the responsibility of perpetually operating and maintaining the public improvements associated with the subdivision.

Councilor Asson moved to accept public improvements for Sky Gate subdivision. Councilor Burgstahler seconded the motion. The motion carried unanimously.

VI. OTHER BUSINESS

A. Planning Commission Appointment

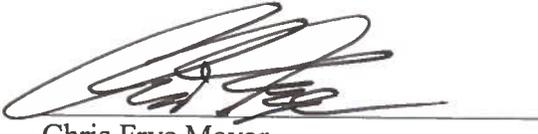
Mayor Frye appointed Tim Clem to the Planning Commission. The **Council** concurred.

VII MAYOR/COUNCILOR BUSINESS

- **Council** directed staff to reach out to the individuals unofficially working on researching the viability of the two projects identified by the Community Assets Committee (CAC) as potential projects and encourage them to officially organize and move forward with their research.
- The City has been receiving positive comments on the Hood Avenue improvement project.
- **Mayor Frye** reported he and Manager Gorayeb met with Mike Reed and the manager for the Best Western Ponderosa Lodge to discuss the possibility of raising the transient room tax to 9.99%. **Mayor Frye** reported he had met with other lodging providers and had found most to be supportive of the idea. The **Council** discussed the matter and decided to hold a public hearing at the February 11th regular meeting to provide an opportunity for the lodging providers and community members to share their thoughts on the proposal.
- A cottonwood tree next to the Chamber of Commerce has been recommended for removal by the City Forester and the Urban Forestry Board due to safety concerns.

VIII. ADJOURN – 8:55 p.m.


Kathy Nelson, City Recorder


Chris Frye Mayor