

**CITY OF UMATILLA
COUNCIL MEETING
December 06, 2016**

1. CALLED TO ORDER: Mayor Trott called the regular council meeting to order at 7:00pm.

2. ROLL CALL

PRESENT: Councilors Dedrick, Farnsworth, Lougee, Ribich, and TenEyck.

ABSENT: Councilor Ray.

STAFF PRESENT: Recorder Sandoval, Manager Pelleberg, Deputy City Manager Ince, Planner Searles, and Chief Huxel.

3. PLEDGE OF ALLEGIANCE: Recited at 7:01pm.

4. APPROVAL OF AGENDA: Recorder Sandoval announced that at the request of City Manager Pelleberg, pages 219 -224 were added to the agenda. She also added that page 62 and page 224 were the exact same map. Councilor Ribich moved to approve the amended agenda, as requested by Manager Pelleberg. Councilor Farnsworth seconded the motion. Voted. 5-0. Motion carried.

5. PRESENTION: None.

6. APPROVAL OF MINUTES: It was moved by Councilor TenEyck to approve minutes for November 1, 2016. It was seconded by Councilor Dedrick. Voted: 5-0. Motion carried.

7. PUBLIC COMMENT:

7.1 June Anderson – wanted to ask Council for permission on a septic waste system on one of the properties that she owned. Mayor Trott explained that Council could not take formal action on her request but would ensure that it would be on the next agenda.

8. CONSENT AGENDA:

Councilor Lougee asked about item 1080 – Owen Equipment Co. on page 15 of the agenda. Manager Pelleberg explained that it was a new-used street sweeper. Our old street sweeper disintegrated. It was a piece of equipment that was slated for replacement. It had been budgeted for, we just had to pick one up sooner than anticipated.

Councilor Farnsworth asked if it was compatible with the old one if we needed parts. Manager Pelleberg stated not at all, but he had been talking to our friends at the City of Stanfield and they may be interested in our old unit.

Councilor Lougee moved to approve 8.1(a) and 8.1(b) Paid Invoices and 8.2 Court Report. . The motion was seconded by Councilor Dedrick. Voted: 5-0. Motion carried.

9. COMMITTEE REPORTS:

It was moved by Councilor Dedrick to approve items 9.1 Tree Board Committee, 9.2 Code Enforcement Board, 9.3 Budget Committee, and 9.4 Parks and Recreation Committee by re-appointing Mr. Harold Simmons to the Tree Board Committee, Ms. Jude Simmons and Mr. Esteban Rodarte to Code Enforcement Board, Ms. Ramona Anderson to the Budget Committee, and Mr. Shane Fink to the Parks and Recreation Committee. Motion was seconded by Councilor Farnsworth. Vote: 5-0. Motion carried.

10. UNFINISHED BUSINESS: None.

11. NEW BUSINESS:

11.1 PA-2-2016 – Fastrack, Inc. – Mayor Trott opened the public hearing by asking Manager Pelleberg to provide staff information. Manager Pelleberg stated that this was something that had been before the Council previously, and it was asked of the developer to take a look at what he was submitting to the Planning Commission and the City and maybe look at a different direction of things to be more concise of what we were trying to do. Mr. Wick from Fastrack, Inc. was present in the audience to answer question from the Council. This was a rezone application. They were looking at residential rezone from part of that general commercial zone up in McNary on Willamette Ave, and leaving a hundred foot strip of commercial along the front end of Willamette and there were maps in the packet to indicate where that was at. There was a preliminary layout of his lots and the actual final plat of his subdivision would be going to the Planning Commission for approval.

Mayor Trott asked Mr. Wick to take the podium and give the Council a quick overview for the benefit of the Council and the audience of what he was planning.

Mr. Wick thanked Manager Pelleberg and Planner Searles, the staff, and members of the Council for allowing them the opportunity once again to discuss the issue. Mr. Wick explained that back in April their application had been turned down, and he believes that at the time the bulk of the weight of the Council's decision revolved around the size of the lots and the potential product type. At the time, they had tentatively thought that they would put thirty lots there, each average lot size about eighty-five hundred square feet, considering the minimum square footage required by the code was eight thousand square feet. The Council had the right to say that they wanted to maintain a higher image out there over the tax base. He felt better if they increased the size of the lots a little bit and offered a higher end product it would be better for the community. He knows there were concerns over product type. He wanted to give the Council members some pictures of some stuff they had done over in Pasco.

Councilor Dedrick stated that her concern that people in that kind of area if there were any kind of mini mall or something like that it would not be conducive to the area. She thought the whole area should be residential.

Manager Pelleberg stated that they were only looking

Councilor Ribich stated that he really appreciated him coming forward and talking to the Council. He felt the application suites the needs of our community. He appreciated Mr. Wick's dedication to our community.

Councilor Ribich asked if there were any issues with separating that hundred foot wide strip as mixed use and rezoning the rest as R1. Planner Searles stated that was what was being proposed tonight. Councilor Ribich asked if the replat would go forward based on the decision tonight. Planner Searles explained that if they approved this, then he would come in with a subdivision application in the next few months to get that approval. Then once he had subdivision approval then he could start building houses.

Councilor Lougee thanked Mr. Wick. He agreed with Councilor Dedrick, would prefer to see it all residential. He would like to revisit that in the future.

Mayor Trott asked the audience if there were any further questions. Seeing none, he closed the public hearing.

Councilor Lougee moved to approve item 11.1 PA-2-2016 Fastrack, Inc. as presented. Councilor TenEyck seconded the motion. Voted: 5-0. Motion carried.

Planner Searles explained that we would come back with an ordinance to make the formal changes to the code.

11.2 Appeal of Planning Commission Decision – Mayor Trott opened the public hearing by asking Planner Searles and Manager Pelleberg to assist Council. Planner Searles stated that he didn't want to misrepresent anything to the Council before allowing both parties to speak on the issue at hand.

Ms. Kendra Russell, attorney representing Tom and Janice Carey, explained that her clients submitted a replat application to vacate an easement on their property located in McNary Vista Estates. The City Planner originally approved the application and vacated the easement. The City Planner made the determination that Oregon Statue ORS 92.185 allowed the City to eliminate a public easement through the replat process. That decision was appealed by the Petersons, who are the owners of the neighboring lots. The City Planning Commission decided to reverse the City Planner's decision, despite having the authority to vacate a public easement through the replat process, the Planning Commission could not decide whether the easement was public or private.

Ms. Russell wanted to address if the City Council had the authority to hear the matter. The Planning Commission left issues undecided. The language in the City of Umatilla zoning ordinance section 10-14-2, clearly allowed this appeal to the City Council.

Mr. Bill Kuhn wanted to address the issue of how someone would appeal a Type II planning decision, because he thinks Ms. Russell's argument was that there were no Type II planning decision any more if you read the language of the Umatilla City code. Planner Searles allowed the Careys to replat lot 10 in McNary Vistas to eliminate the road way that serves as

a driveway to the back of the Petersons' property. Thus, denying them access to the back of their back of their property. The code states that the administrator's decision may be appealed to the Planning Commission by any party. Which is what the Petersons did, when the City Planner granted the Careys permission to replat. The code says the Planning Commission decision is the City's final decision, and it can be appealed to the Land Use Board of Appeals (LUBA) within 21 days of becoming final. That is what the Careys have done. They have taken the decision to next step already. The Petersons position remains the same that the Council has no authority to hear this appeal.

Ms. Russell clarified that the only reason the Careys filed an appeal with LUBA was because they could not get a definitive answer from the City Planner whether or not the Council had the authority to even hear the appeal, and because they did not want their time to run out, they went ahead and filed their notice with LUBA.

Mayor Trott asked if there had been a decision made by LUBA. Manager Pelleberg stated no, they only filed their case with LUBA in the event the Council could not give them an answer.

Councilor Dedrick stated that she didn't know how the City could make the decision if there was nothing definitive on that right-of-way. Her memory on that was that it would be used as a public right-of-way so if there was a fire they could get to the back side of the property. Manager Pelleberg interjected by stated that they didn't need to have a discussion right now, they needed to make a decision. They had the information provided by our attorney in relation to this matter. It is not a matter of discussion at the moment, it is a matter of deciding whether or not they can make a decision. If they cannot, it will go to LUBA and LUBA may decide to kick it back to the Planning Commission.

Councilor Lougee wanted to know if Manager Pelleberg could summarize what the City attorney stated. Manager Pelleberg stated that our attorney said that he agrees with the "analysis of ORS 92.185 allowed for reconfiguration of public easements within a recorded plat upon replatting and upon approval of a replat the easements within a replat area will be vacated." He believes that was what Planner Searles had done.

It appears in the present case the easement at issue was created by recorded plat. It is not an easement created by a recorded document for a specific or limited purpose or use granted by one landowner to another. While I have not researched the issue, I do not think the decision of the Council in this appeal in any way prevents or restricts the parties from seeking a legal determination as to their respective rights as to use of the area of land in question.

Manager Pelleberg's conversation with Attorney Blanc was regardless of what the Council thought today, it will more than likely go to LUBA.

Mr. Kevin Peterson took the podium to defend a 20 foot easement that both the Careys and he had access too. The driveway was created in 2003 to accommodate the home he lives in. The problem he has with the whole situation is that the Careys are not being forthcoming

about the property. They are selling it. He does not understand why they are trying to close a 20 foot easement that will be beneficial to the new owners as well. He would have not bought the property if he knew that it would be an issue.

Mayor Trott asked if there was any indication if there was any language anywhere as to if the easement was public or private, it was just an easement. Manager Pelleberg stated that it was just an easement on the map, it was not declared one way or another.

Mayor Trott asked if there was such a term as a shared easement.

Planner Searles stated that an easement was part of somebody's property for a specific purpose. There was really not a need for lot 10, owned by the Careys, to have an easement on it for them. They can get access anywhere across the front end of their property. The same goes for lot 9. They can get access from the front end of their property. To exist as an easement to provide access to lot 10 does not make sense.

Councilor Ribich stated that by the testimony provided by Mr. Robert Barton to Planning Commission, it sounds like it was supposed to be a shared easement by both property owners, and there were some intended usages that were never came to fruition, and the use of the property changed from Mr. Barton's original plans.

Mayor Trott closed the public hearing. Mayor Trott stated the easement was not defined one way or another, and asked Council Members to defer action until we could get a better answer from our Counsel.

Council TenEyck moved to defer action until December 20, 2016 at 7:00pm. Councilor Ribich seconded the motion. Voted: 5-0. Motion carried.

11.3 2017 Meeting Calendar – Councilor TenEyck moved to approve item 11.3 2017 Meeting Calendar. The motion was seconded by Councilor Lougee. Voted: 5-0. Motion carried.

11.4 Certification of Election – It was moved by Councilor TenEyck to approve item 11.4 Certification of Election. The motion was seconded by Councilor Farnsworth. Voted: 5-0. Motion carried.

11.5 Liquor License Approval – Sam's Stop and Shop – It was moved by Councilor TenEyck to approve item 11.5 Liquor License Approval. The motion was seconded by Councilor Farnsworth. Voted: 5-0. Motion carried.

12. CORRESPONDENCE: None.

13. PUBLIC COMMENT: None.

14. MAYOR'S MESSAGE:

14.1 Mayor Trott wanted to thank everyone.

15. STAFF REPORT: Manager Pelleberg said it was all in his report. He appreciated the Council for taking the time to deal with the issues on the agenda. He was going to thank Councilor Farnsworth for her service to Council, but since we were still having another meeting, he will save his speech until next meeting.

16. COUNCIL INFORMATION & DISCUSSION:

16.1 Councilor Ribich – It took us a lot to get through our agenda today. We still have a lot of homework to do. We will get through it. He would like to thank Councilor Farnsworth for her service.

16.2 Councilor Farnsworth – She was so wore out she has nothing to report on.

16.3 Councilor Lougee – Thanks to everyone for coming. Wanted to wish everyone a wonderful holiday.

16.4 Councilor Dedrick – She wanted to add Manager Pelleberg and Deputy City Manager Ince to the business cards. She has started to refer people to Deputy City Manager Ince because Manager Pelleberg was hardly in the office. Manager Pelleberg stated that people were always welcomed to schedule an appointment.

16.5 Councilor TenEyck – He would like to ask that we ask Mr. Blanc to research the issue. He would like to have better clearer feedback from him. They were not land use judges or LUBA experts. He would like to have more direction from our counsel.

17. ADJOURN TO EXECUTIVE SESSION: ORS 192.660 (2)

18. RECONVENE:

19. ADJOURN: The next meeting will be held on December 20, 2016 at 7:00pm. It was moved by Councilor Dedrick to adjourn the meeting. The motion was seconded by Councilor Farnsworth. Voted: 5-0. Motion carried. Meeting adjourned at 9:12pm.

David P. Trott – Mayor

ATTEST:

Nanci Sandoval – City Recorder