

**RIO DELL CITY COUNCIL
REGULAR MEETING
JULY 18, 2017
MINUTES**

The closed session/regular meeting of the Rio Dell City Council was called to order at 5:00 p.m. by Mayor Wilson.

ROLL CALL: Present: (Closed Session) Mayor Wilson, Mayor Pro Tem Johnson, Councilmembers Garnes, Marks, City Manager Knopp and City Attorney Gans

Absent: Councilmember Strahan (excused)

Present: (Regular Meeting) Mayor Wilson, Mayor Pro Tem Johnson, Councilmembers Garnes and Marks

Absent: Councilmember Strahan (excused)

Others Present: City Manager Knopp, Finance Director Woodcox, Community Development Director Caldwell, City Clerk Dunham and Water/Roadways Superintendent Jensen

Absent: Chief of Police Hill (excused)

CLOSED SESSION

The Council recessed into closed session at 5:30 p.m. to discuss the following matters:
Conference with Labor Negotiator – City Manager. Employee Organizations: Rio Dell Employees Association, Rio Dell Police Officers Association and all Contract Employees (Pursuant to §59457.6 of the Government Code)

Conference with Legal Counsel – Anticipated Litigation – Initiation of Litigation (Pursuant to paragraph (4) of subdivision (d) of §59456.9 of the Government Code) (One case)

Public Employee Performance Evaluation – Title: Chief of Police (Pursuant to §59457 of The Government Code)

Conference with Real Property Negotiators – Property: APN 205-111-029 – Agency Negotiator: Kyle Knopp, City Manager; Russell Gans, City Attorney. Under negotiation: Consider and discuss price and terms of payment for the contemplated conveyance of rights to water well located on subject property (Pursuant to §59456.8 of the Government Code)

Conference with Legal Counsel – anticipated Litigation – significant exposure to litigation (Pursuant to paragraph (2) or (3) of §59459.9) One matter to be discussed. The matter concerns a submitted claim for inverse condemnation allegedly arising from damage caused by flood and/or surface water control facilities.

The Council reconvened into open session at 6:30 p.m. Mayor Wilson announced that prior to the Council recessing into closed session the Council announced that Agency Negotiators Kyle Knopp, City Manager and Russ Gans, City Attorney will be recessing into closed session for the purpose of negotiating price and terms of payment related to lease or sale of any City interest in the well located on subject property to Dennis Wendt.

PUBLIC PRESENTATIONS

Julie Woodall addressed the Council regarding the removal of trees in the median at 770 Wildwood (Root 101) and said when the request to remove the median was brought before the Council at the June 6, 2017 meeting, she remembers specifically the very last thing said by Councilmember Garnes was to save and transplant the trees which became part of the Council's motion. She said in driving by on Monday she noticed they had been cut down and asked when the decision was made to cut the trees down and if a certified arborist made the determination that they would not survive being transplanted. She said the City Council should have been informed as Councilmember Garnes was adamant about saving the trees.

She noted that she was in contact with the owner of Root 101 and he did inform her that the City gave them permission to cut down the trees so she is not holding them responsible however; she would like to know why an arborist wasn't consulted. She commented that when the medians were first put in, an arborist was consulted and the City was advised that those areas were adequate for planting the trees that were planted. She commented that Root 101 has agreed to replace the trees with new trees and expressed concern that the trees replaced should be of equal maturity rather than a stick in a 5 gallon can. She thanked Harry Smith for responding to her concerns.

City Manager Knopp stated that it is true that on June 6, 2017 the Council provided direction that the trees be transplanted and relocated but in the course of moving the project forward staff became informed that the trees were not in good health and would most likely not survive the transplant process. As an alternative the project proponent proposed purchasing new trees and placing them in appropriate locations throughout the city.

He said his mistake was to not inform the Council to get feedback on the request. He apologized to both the Council and Harry Smith and said he didn't realize how important these trees were to some people.

JULY 18, 2017 MINUTES
Page 3

Water/Roadways Superintendent Jensen addressed the issue and said he was called out to look at the trees with the owner of Root 101 and observed that two of the trees were cracked and split at the base of the trunk and three other trees were damaged from weed eating. He said if they were to be transplanted in another part of the median during the dry season they would die. He said it would be better to wait until winter and plant new trees somewhere else. He pointed out that in that median section, the dirt is only 10-12 inches deep and below that is gravel. He provided pictures of the trees showing the root system growing horizontal (Attachment 1 to these minutes). He said since the trees were damaged at the base, he brought it to the attention of the City Manager and after careful evaluation it was determined that the trees would not survive if replanted. As such, staff made the decision to allow Mr. Smith to replace and relocate the trees with healthier trees.

Julie Woodall again asked if an arborist was consulted in which staff indicated that they were not.

Mayor Wilson commented that since this item is not agendaized, the Council will not be taking any action however; will allow public comment at this time.

Dean Glaser addressed the issue and said councilmembers and citizens get accustomed to trees in the City and said about six years ago, the water lines in front of Ace Hardware in Fortuna had to be replaced which necessitated the removal of trees so sometimes it's unavoidable. He said the Council should accept the fact that staff made the best decision they could at the time and move on.

Harry Smith, owner of Root 101 apologized to the Council for trying to expedite the project in attempt to get it completed before Fortuna Auto Expo and Wildwood Days and said it was a judgement call by city staff to cut the trees down rather than try to save damaged trees. He commented that he got messages from a former Mayor of the City shaming him and slamming his business on social media.

Julie Woodall commented that she was the former Mayor that commented on social media.

Councilmember Garnes expressed concern that the City Manager willfully defied the direction of the City Council regarding removal of the trees and said during the course of the discussion at the prior council meeting; Mr. Smith agreed to save the trees after she stipulated that she wanted the trees saved. She said what she sees is a breach of a verbal contract and that the agreement was between he and the City Council; not he and staff. She added that it is a trust issue with her and questioned the credibility of the City Manager and Mr. Smith.

She commented that she has taken probably 60-70 trees from the Arbor Society as twigs and transplanted them and they survived as well as taking a tree from here to Sacramento and transplanting it during hot weather which is also doing well. She said as a nursery, Root 101 should know how to transplant and save trees. Nowhere was it stated that if it was too onerous to transplant the trees that they could kill them.

JULY 18, 2017 MINUTES
Page 4

She added that she is certain that everyone has heard the term “it’s easier to ask permission than to ask forgiveness” and down the road any agreement made by the City Council should be taken seriously regardless of how unimportant someone thinks it is. She stated that some type of action needs to be taken by the Council as the result of this decision or there will be problems down the road.

Councilmember Marks stated that they have heard all the excuses as to why the decision was made to cut down the trees but the fact remains that Mr. Smith made a deal with the City Council and broke that deal so as far as he’s concerned the project is a deal breaker.

Mayor Pro Tem Johnson commented that there seems to be a lot of emotion regarding this issue but the City Manager accepted responsibility, apologized and learned a good lesson so the Council should accept his apology and move on.

Mayor Wilson agreed and said the City Manager took responsibility and that trees are a big deal but Rio Dell is not Ferndale or Fortuna. Now that it’s happened it’s too late to do anything about the trees and he hopes that in the future staff will learn by this mistake and follow proper protocols.

Harry Smith suggested the trees be replaced with mature 10 foot trees of the City’s choice. He also commented that he cut the trees down with permission of the City Manager yet he is still getting flak from the Council and citizens.

Mayor Wilson reiterated that the Council cannot take action on an item not on the agenda and asked for the consensus of the Council to place the item on the next agenda.

The consensus was that the item be placed on the August 1, 2017 regular meeting agenda for consideration and possible action.

Water/Roadways Superintendent Jensen left the meeting at this time.

CONSENT CALENDAR

Motion was made by Johnson/Garnes to approve the consent calendar including approval of minutes of the July 6, 2017 regular meeting; approval of Resolution No. 1343-2017 confirmation of FY 2017-18 Tax Assessment for the 1978 Sewer Assessment Bonds; and approval of Resolution No. 1344-2017 for the transfer of reserve amounts amending the FY 2017/18 Operating and Capital Budget for a Grade Certified Wastewater Operator and for a lawn mower purchase. Motion carried 4-0.

SPECIAL CALL ITEMS/COMMUNITY AFFAIRS

Discussion on Collapsed Sidewalk at 61 Monument Road known as the Habitat Parcel

JULY 18, 2017 MINUTES
Page 5

City Manager Knopp provided a staff report and said sometime following the April 1992 earthquakes Humboldt Habitat for Humanity became the owner of what has become known as the Habitat Parcel at 61 Monument Road which is located about 200 feet west of Wildwood Ave.

He said since 1992 and the collapse of the residence there has been little activity at the site but during the summer of 2015 the crews did respond to complaints of odor, removing a dead animal, trimming back vegetation and removing earthquake debris. He noted that the City invoiced for this work and was successfully compensated by Humboldt Habitat for Humanity.

Additionally, over the past 5 years the sidewalk and retaining wall on the property began to deteriorate culminating in its collapse during the 2015-2016 rainy season.

City Manager Knopp further reported that the City has attempted to compel the local Habitat for Humanity organization to repair the damage but has been unsuccessful. He said they have attempted to transfer the property to another property owner including donating it to the City but unfortunately the parcel has no value and is located on unstable ground. He said for this reason staff has not been able to make a recommendation to assume the responsibility as it represents a liability to the City.

He said it should be made clear that the repair of the sidewalk is not the responsibility of the City but the property owner which makes this particular situation difficult with the owner basically being a defunct charitable organization and has been non-responsive in correcting the situation. He noted what also complicates the issue is the lack of value in the parcel.

He reported that in reviewing options for repairing the sidewalk, staff met with Hilfiker Retaining Walls as well as the City Engineer and the recommendation from the engineer was that the City pursue Hilfiker to propose a solution. The following three (3) options were presented:

- 1) Fence the parcel off and abandon it;
- 2) Do a full dig out with placement of a gabion wire mesh structure underneath the road to secure the entire section of Monument Road at a cost of around \$250,000; or
- 3) Construct a smaller scale gabion structure on the sidewalk utilizing a spiral nail system underneath Monument Road to secure the road which is the least expensive (\$30,000 - \$50,000) and recommended by Hilfiker and the City Engineer.

City Manager Knopp said the plan would be to work with Hilfiker Pipe and identify a time to advertise for bids likely around November or December and identify a timeline in the spring or summer for commencement of the project.

JULY 18, 2017 MINUTES
Page 6

He said this is the general recommendation by staff at this time unless the Council has any requested deviations to the proposal.

Mayor Pro Tem Johnson suggested the Council authorize the City Manager and the City Engineer to begin preparation of the contract documents.

Councilmember Marks suggested staff explore the possibility of reimbursement by the Humboldt Habitat for Humanity with possible money upfront to begin the work.

City Manager Knopp said staff is certainly going to request they compensate the City for the cost of the repairs and hopefully they will comply. He stated that staff has made several attempts for them to initiate the repairs and the organization simply doesn't have the administrative apparatus to conduct this type of repair and has asked the City to initiate it.

Councilmember Garnes asked if the plan is to have a total passable sidewalk once the repairs are done.

City Manager Knopp explained the plan is to return the sidewalk to its former condition including the placement of a fence but there is no guarantee with this particular area because the ground is potentially moving. He said the engineer has advised that the City could spend a lot of time and money exploring the issue and doing geotechnical analysis but the reality is that this repair is highly adaptable to the level of movement of the ground which is not extreme.

Mayor Wilson stated that it seems the City is stuck with doing some kind of repairs to safely secure that area and suggested staff press for some upfront money from Humboldt Habitat. He agreed with Mayor pro Tem Johnson that if there is another rainy season, the ground could collapse even more which will result in additional expense.

City Manager Knopp pointed out that if staff waits to issue the Request for Proposals in November or December it will be more likely to get bids rather than issuing them now due to the busy construction season.

ORDINANCES/SPECIAL RESOLUTIONS/PUBLIC HEARINGS

Introduction and First Reading (by title only) of Ordinance No. 358-2017 Establishing Personal Cannabis Cultivation Regulations, Section 17.030.235 of the Rio Dell Municipal Code (RDMC)
Community Development Director Caldwell provided a staff report and said as the Council is aware this is the result of the voter approved Adult Use of Marijuana Act (AUMA) which legalizes the use of recreational cannabis and creates a State regulatory and licensing system for commercial cultivation, testing, manufacturing and distribution of nonmedical marijuana as well as provisions for personal cannabis cultivation.

A summary of the personal cultivation regulations under AUMA include:

JULY 18, 2017 MINUTES
Page 7

- Allows persons to cultivate six (6) plants.
- Local governments may “reasonably regulate” but not prohibit “indoor” cultivation which includes a greenhouse or other detached accessory building.
- Local governments may ban outdoor cultivation, but those that do will not be eligible for grants.
- Plants grown outdoors may not be visible by normal unaided visions from a public place.
- Cannabis in excess of 28.5 grams must be kept in a locked space within the person’s private residence.
- Local governments can require a permit process with an appropriate fee to ensure compliance with the various building codes, including the fire code. In addition a permit process could require periodic inspections upon appropriate notice.

Community Development Director Caldwell stated that the draft ordinance was presented to the Planning Commission for consideration at a Special Meeting on July 11, 2017 and after careful consideration, the Planning Commission made the following recommendations to the Council:

- An annual permit authorizing the personal cultivation including a Life-Safety Inspection with the associated fee of \$75.00. (Draft Application and Acknowledgment form included as Attachment 2)
- Consent to a minimum of one additional on-site compliance inspection annually, to be conducted by appropriate City officials during regular business hours and to pay the Life-Safety Inspection fee in effect at that time.
- Personal cultivation would only be allowed in detached accessory buildings thus reducing the possible fire risk to the home and its occupants.
- Clarify that the maximum allowed interior ceiling height is ten (10) feet.

Community Development Director Caldwell continued with review of the proposed performance standards for residential cannabis cultivation and processing for personal use as identified under (a.) - (r.) of the ordinance.

Mayor Pro Tem Johnson asked if the Planning Commission was unanimous with regard to the recommended provisions.

Staff noted that the vote was unanimous among the five Commissioners present.

Mayor Wilson indicated that he had attended the Planning Commission meeting along with Councilmember Marks and there was good dialog on the subject. He said his biggest concern is with regard to enforcement, particularly with outdoor grows and the odors associated with those grows. He said it has to do with the quality of life for our citizens and protecting property values. He referred to an existing property owner who has not been able to sell his property because of the odor of outdoor marijuana grows. He said he doesn’t really care how many

grows there are in accessory structures but people who are not involved should not have to deal with the smell of outdoor marijuana.

He said he is good with the ordinance as proposed but is tired of having ordinances the City can't enforce. He said he can't see there being a big influx of people stepping up to apply for a permit and expressed concern regarding compliance with the Fire Code as well as the Electrical Code. He suggested the Council schedule a study session to discuss how the ordinance is going to be enforced. He said there are huge concerns that as a City need to be addressed.

Councilmember Garnes commented that it could take a lot of time to address the issue of enforcement and suggested the study sessions begin as soon as possible.

Mayor Wilson pointed out that the rules will change in January 2018 as the State adopts its regulations.

Mayor opened the public hearing to receive public input on the proposed ordinance.

Sharon Wolff asked for clarification that only those property owners with accessory structures will have the option to cultivate cannabis for personal use.

Mayor Wilson clarified that it could be a renter if the landlord allows it.

Community Development Director Caldwell explained that cultivation will only be permitted in detached accessory structures and the reason being is that many of the older homes don't have a one-hour firewall between the attached garage and the house.

There being no further public comment, the public hearing closed.

Motion was made by Johnson/Marks to introduce and conduct first reading of Ordinance No. 358-2017 *Establishing Personal Cannabis Cultivation Regulations, Section 17.030.235 of the Rio Dell Municipal Code (RDMC)* and continue consideration, approval and adoption of the proposed Ordinance to the meeting of August 1, 2017. Motion carried 4-0.

REPORTS/STAFF COMMUNICATIONS

City Manager Knopp distributed a written City Manager Update of recent activities and events (Attachment 2 to these minutes) and announced the date for the next ATP Safe Routes to School project as August 1, 2017; reported interviews for the Public Works positions are underway; staff is continuing to work with the State Water Resources Control Board on the City's NPDES permit; staff has requested an extension to the Housing & Community Development Department for the Architectural Barrier Removal (ADA City Hall Porch Project)

JULY 18, 2017 MINUTES
Page 9

and if denied, the project funding will be impacted; and provided an update on the Metropolitan Wells Project with the project completion date set for August 31, 2107.

Finance Director Woodcox reported on recent activities in the finance department and said it was business as usual with the weekly processing of accounts payable and bi-weekly processing of payroll as well as closing out of the monthly balance sheet and utility billing. She also reported that the new auditor will be on site on August 14th to begin field work on the 2016-2017 audit.

Community Development Director Caldwell reported on recent activities in the planning and building department and said it has been extremely busy as far as construction activities. He also reported that the State passed new laws regarding Electric Vehicle charging stations requiring expedited permitting processes like previously done for solar permits in 2015. He stated that all new residential construction is required to have at least a Level 1 charging station installed. He said he will be bringing the draft ordinance to the Council for introduction and first reading at the August 1, 2017 regular meeting.

He also reported that Sean Studebaker, Humboldt Rotational Molding had submitted an application for a Conditional Use Permit for 9,800 square feet of indoor cultivation of medicinal cannabis in the existing structure at 853 Northwestern Ave. in the Humboldt Rio Dell Business Park. He noted that the only modifications to the building will be the construction of beds for cultivation, installation of lights, carbon filter fans, and vents so it is anticipated he will be the first business to be in operation. He said the item is scheduled to go before the Planning Commission at their July 25, 2017 regular meeting.

Mayor Wilson commented that there seems to be a vehicle parked at the City's EV charging station on a regular basis and asked if it is in fact charging the vehicle.

City Manager Knopp said he would get an update from Redwood Coast Energy Authority (RCEA) on vehicle charging activity and report back to Council.

Councilmember Garnes asked if anything was moving forward with regard to the Martino Cannabis activity permit.

Community Development Director Caldwell reported that they actually submitted a draft site plan in which staff provided some preliminary comments on so they will be making some minor modifications and getting very close to submittal of the application. He said the development involves a subdivision with four parcels and one remainder including four larger structures, including three or four greenhouses for cultivation, manufacturing, a nursery, and warehouse distributing so it is a very significant project.

Councilmember Garnes referred to the existing soil business at the Humboldt Rio Dell Business Park with the chain link fence and asked if they will have to meet the same design

review requirements as the Glen White Group and others.

Community Development Director Caldwell noted that there are no regulations related to fencing for existing businesses but if they come in and make application for a business that triggers Design Review, then conditions of approval can be proposed. He said hopefully when new developments come in, they will volunteer to comply. He explained that Conditions of Approval are tied to the Conditional Use Permit process.

He noted that it is pleasant to work with these developers as so far they have all been willing to go the extra mile to please the City.

Mayor Wilson said at the last Planning Commission meeting the Commissioners requested a field trip with the Planning Commission, City Council and staff to tour the Humboldt Rio Dell Business Park and asked for the status of that request.

Community Development Director Caldwell said staff discussed the idea and felt it might be better to wait until someone actually breaks ground and perhaps conduct a tour during a ground breaking ceremony.

COUNCIL REPORTS/COMMUNICATIONS

Mayor Pro Tem Johnson reported that for the last four years he has been one of the two City members on LAFCo and each year they hold an annual conference at different locations throughout the State and announced that he will be attending the 2017 Conference in the San Diego area in October.

Mayor Wilson reported on his attendance at the Redwood Coast Energy Authority meeting and said they are moving along with the CCA Program and that Ferndale also joined the program so all of the cities in the County are now members. He said also Del Norte County representatives were present to discuss joining the CCA Program and the way the JPA is set up any adjacent county can come into the JPA so there is some dialog going on with that.

ADJOURNMENT

Motion was made by Johnson/Garnes to adjourn the meeting at 7:34 p.m. to the August 1, 2017 regular meeting. Motion carried 4-0.

Frank Wilson, Mayor

Attest:

Karen Dunham, City Clerk