

MINUTES OF A REGULAR MEETING OF THE CITY
COUNCIL OF THE CITY OF COEUR D'ALENE, IDAHO,
HELD AT THE LIBRARY COMMUNITY ROOM

December 16, 2014

The Mayor and Council of the City of Coeur d'Alene met in a regular session of said Council at the Coeur d'Alene City Library Community Room December 16, 2014 at 6:00 p.m., there being present upon roll call the following members:

Steve Widmyer, Mayor

Woody McEvers) Members of Council Present
Steve Adams)
Dan Gookin)
Amy Evans)
Loren Ron Edinger)
Kiki Miller)

CALL TO ORDER: The meeting was called to order by Mayor Widmyer.

INVOCATION: An invocation was provided by Pastor Paul Van Noy of the Candlelight Christian Fellowship.

PLEDGE OF ALLEGIANCE: The pledge of allegiance was led by Councilmember Adams.

MOBILE SANTA PRESENTATION: Fire Captain Jake Bieker informed the community that the Fire Department will host Santa coming to town on the antique fire truck, which will include a food drive for the community. Santa can be tracked through a program created by the City on the City's website www.cdafire.org/santa.html. He encouraged citizens to come out and say hi to Santa and donate a nonperishable food item. This program will continue for five nights from December 19 through December 23, 2014. Councilmember Evans thanked the Fire Department for taking the time to make the program work and appreciated the gift to the community.

PUBLIC COMMENTS:

Tina Kunishige, Coeur d'Alene, stated that she believes that Municipal Code Chapter 9.52 violates the Constitution and Idaho State Code, even with the proposed amendment. She believes that a person has a right under the constitution to secure one's own safety. She requested the City Council repeal the code as it will cost the City more to go through Federal Court.

Chris Kunishige, Coeur d'Alene, expressed concern over the City's legal advice and believes the City should be receiving proper advice. He believes the Council is conducting malfeasance by inviting law suits. He requested the resignation of Legal Department staff.

Dennis Hendrickson, Coeur d'Alene, express concern regarding the inability of law enforcement to maintain neighborhood peace and character. Specifically, he noted a property within his neighborhood on North 9th Street that is in need of beautification. This property contains three lots that are not to code. He clarified that the Spruce Avenue neighborhood watch has encountered issues in the past with no resolution from law enforcement. Mr. Hendrickson stated he contacted code enforcement about a week ago and has not heard back yet, but had not had success in the past.

CONSENT CALENDAR: Motion by Gookin, seconded by McEvers to approve the consent calendar.

1. Approval of Council Minutes for December 2, 2014 (workshop and regularly held meeting).
2. Approval of Bills as Submitted.
3. Setting of General Services and Public Works Committees meetings for December 22, 2014 at 12:00 noon and 4:00 p.m. respectively.
4. Approval of a Beer and Wine License to Melone's Public House; 2360 Old Mill Loop, Suite J101, Michael Melone, John Beutler, James Schindler (new).
5. Approval of the Annual Road and Street Financial Report for year ending September 30, 2014.
6. **Resolution No. 14-053 - A RESOLUTION OF THE CITY OF COEUR D'ALENE, KOOTENAI COUNTY, IDAHO AUTHORIZING THE BELOW MENTIONED CONTRACTS AND OTHER ACTIONS OF THE CITY OF COEUR D'ALENE INCLUDING APPROVING AN AMENDMENT TO THE AGREEMENT WITH POLICE CAPTAINS; APPROVING A CONSULTANT LABOR SERVICES AGREEMENT WITH RON H. CLARK; AND ACCEPTANCE OF A GRANT DEED FOR LITTORAL RIGHTS FROM WAYNE AND NANCY NASH.**

ROLL CALL: McEvers Aye; Edinger Aye; Gookin Aye; Evans Aye; Adams Aye; Miller Aye.
Motion carried.

COUNCIL ANNOUNCEMENTS:

Councilmember Evans stated that she attended the dedication of the fourth Habitat for Humanity house on Saturday. This was a great celebration for Mr. Blankenship, the newest Habitat home owner.

Mayor Widmyer stated that he participated in the 4th Annual Red Kettle Challenge between Kootenai County and Spokane County Mayors. He announced that the Kootenai County Mayors won for the fourth year in a row over Spokane. Kootenai County Mayor's raised over \$21,000 and Fred Myer donated an additional \$5,000.00 for a total of \$26,000.

COUNCIL BILL NO. 14-1022
ORDINANCE 3498

AN ORDINANCE AMENDING THE MUNICIPAL CODE OF THE CITY OF COEUR D'ALENE, KOOTENAI COUNTY, IDAHO, AMENDING SECTION 9.52.010 TO REMOVE FIREARMS FROM THE DEFINITION OF WEAPON AND AMENDING SECTION 9.52.030 TO ADD AN EXCEPTION FOR PERSONS DISCHARGING A FIREARM IN THE LAWFUL DEFENSE OF PERSON PROPERTY; PROVIDING REPEAL OF CONFLICTING ORDINANCES; PROVIDING SEVERABILITY; PROVIDING THE PUBLICATION OF A SUMMARY AND PROVIDING AN EFFECTIVE DATE.

STAFF REPORT: City Attorney Mike Gridley stated that amending this code section will bring the City into compliance with the Attorney General's recommendation. In 2003 the code was created in response to some extremist groups within the community. In 2008 the legislature adopted a law that states cities do not have power to regulate transportation of firearms. He explained that Councilmember Adams brought this issue forward concerned about it not being in compliance with state law, which lead to further research. There are two state statues that appear to be in conflict one stating cities can regulate disturbances while the other states that cities cannot regulate firearms. He believes the Attorney General's office review of the city ordinance is valid; explaining that the law stating that cities cannot regulate firearms would be the law that has standing. There is still a law regarding brandishing, which relates to those carrying firearms.

MOTION: Motion by Gookin, seconded by Adams, to pass the first reading of Council Bill No. 14-1022.

DISCUSSION: Councilmember McEvers asked if the Deputy Attorney General's opinion carries the same weight as the Attorney General. Mr. Gridley explained that the request went to the Attorney General then he referred it his staff which is endorsed by the Attorney General. Councilmember McEvers asked if the current code infringes on the Constitutional right to bear arms. Mr. Gridley explained that the term arm equates to the term firearms and that is being struck from the code so it is not an infringement. Cities still have the right to regulates weapons other than firearms. Councilmember Miller clarified that the City is just amending parade and public assemblies' code, but the brandishing of firearms code is still in effect. Councilmember Adams clarified that the Idaho Second Amendment Alliance is reviewing all cities codes and had recommended the self-defense language as an additional citizen protection. Councilmember Edinger stated that at the time the Council passed the original Ordinance they were concerned about extremist groups, but that time has passed. He believed that the code did provide safety and benefited the citizens of Coeur d'Alene. Councilmember Edinger explained that someone could go after the city and with the recent Attorney General's Opinion they would likely win, so the best thing is stay out of court and amend the code. Councilmember Gookin stated that he is in favor of the amendment as it brings the City in line with the Constitution and State Code. Councilmember Adams clarified that Idaho code does not allow cities to regulate the carrying of firearms, just the discharge and the amendment will bring the City into compliance. Councilmember Evans said that she has thought a lot about this over the last few months and talked with prior City Councilmembers. She agreed that it was a different time with threats from extremist groups. Additionally, she felt the Ordinance has served the city well and that she would have supported it in 2003. With respect for the Attorney General's office and the

community she will vote to amend the ordinance. Councilmember McEvers expressed hope that common sense prevails for citizens to carry guns in appropriate places.

ROLL CALL: Edinger Aye; Gookin Aye; Evans Aye; Adams Aye; Miller Aye; McEvers Aye.
Motion carried.

MOTION: Motion by Gookin, seconded by Evans, to suspend the rules and to adopt Council Bill 14-1022 by its having had one reading by title only.

ROLL CALL: Edinger Aye; Gookin Aye; Evans Aye; Adams Aye; Miller Aye; McEvers Aye.
Motion carried.

MOTION: Motion by Gookin, seconded by Adams to direct staff to research potential ramifications of dropping the weapons language from the parade code and report back to the City Council.

DISCUSSION: Councilmember Gookin clarified that he is requesting staff to research the possibility of removing this section of the code. Councilmember Adams stated that the list of items is lengthy and warrant review.

ROLL CALL: Edinger Aye; Gookin Aye; Evans Aye; Adams Aye; Miller Aye; McEvers Aye.
Motion Carried.

RESOLUTION NO. 14-054

A RESOLUTION OF THE CITY OF COEUR D'ALENE, KOOTENAI COUNTY, IDAHO AMENDING THE CLASSIFICATION AND COMPENSATION PLAN TO PROVIDE CLASSIFICATION FOR THE POSITIONS OF CITY ADMINISTRATOR, PAY GRADE 21 AND LEAD TRAFFIC TECHNICIAN / ELECTRICIAN, PAY GRADE 11.

STAFF REPORT: Human Resource Director Melissa Tosi explained that the City Administrator position was previously on a contract and is now under the personnel rules; therefore, the position needed to be added to the pay and classification system. The Lead Traffic Technician/Electrician is a new position in the budget. She explained that BDPA has reviewed the job description and has recommended the proposed pay grades.

MOTION: Motion by Gookin, seconded by Evans to approve **Resolution 14-054** approving amendments to the Pay and Classification system to include new classifications for City Administrator (pay grade 21), and Lead Traffic Technician/Electrician (pay grade 11).

ROLL CALL: Gookin Aye; Evans Aye; Adams Aye; Miller Aye; McEvers Aye; Edinger Aye.
Motion carried.

**COUNCIL BILL NO. 14-1023
ORDINANCE 3499**

AN ORDINANCE OF THE CITY OF COEUR D'ALENE, VACATING A PORTION OF MILL STREET RIGHT-OF-WAY FROM THE EAST LACROSSE ADDITION SUBDIVISION, RECORDED IN BOOK "B" OF PLATS, PAGE 119, RECORDS OF KOOTENAI COUNTY, IDAHO, AND, A PORTION OF GOVERNMENT ROAD RIGHT-OF-WAY FROM THE FORT SHERMAN ABANDONED MILITARY RESERVATION, RECORDED IN BOOK "B" OF PLATS, PAGE 153A, SITUATED IN SECTION 11, TOWNSHIP 50 NORTH, RANGE 4 WEST, BOISE MERIDIAN, RECORDS OF KOOTENAI COUNTY, COEUR D'ALENE, IDAHO; GENERALLY DESCRIBED AS THE WESTERLY TWO HUNDRED TWENTY SEVEN FEET (227') OF MILL STREET AND THE EASTERLY THIRTY FEET (30') OF GOVERNMENT ROAD ADJOINING THE WESTERLY END OF MILL STREET; REPEALING ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING A SEVERABILITY CLAUSE; AND, PROVIDING FOR THE PUBLICATION OF A SUMMARY OF THIS ORDINANCE AND AN EFFECTIVE DATE HEREOF.

MOTION: Motion by McEvers, seconded by Edinger, to pass the first reading of **Council Bill No. 14-1023**.

ROLL CALL: Evans Aye; Adams Aye; Miller Aye; McEvers Aye; Edinger Aye; Gookin Aye.
Motion carried.

MOTION: Motion by McEvers, seconded by Edinger, to suspend the rules and to adopt **Council Bill 14-1023** by its having had one reading by title only.

ROLL CALL: Evans Aye; Adams Aye; Miller Aye; McEvers Aye; Edinger Aye; Gookin Aye.
Motion carried.

RESOLUTION NO. 14-055

A RESOLUTION OF THE CITY OF COEUR D'ALENE, KOOTENAI COUNTY, IDAHO AUTHORIZING A SUPPLEMENT TO REAL ESTATE PURCHASE AND SALE AGREEMENT WITH BNSF RAILWAY COMPANY.

STAFF REPORT: Mr. Gridley explained that a Purchase and Sale Agreement with BNSF was previously approved by Council. BNSF recently conducted some environmental assessments of the property through soil samples. Those samples came back with some noted arsenic levels that were higher than allowable amounts. While all environmental tests are not complete, BNSF wanted to give time for the City to study the results and provided additional time for the closing date.

MOTION: Motion by Evans, seconded by Adams to approve Resolution 14-055 approving a supplement to the BNSF Railway Real Estate Purchase and Sale Agreement.

DISCUSSION: Councilmember Gookin asked how typical these findings are what are the next steps. Mr. Gridley explained that the City does not normally test for these types of environmental concerns. He has recently talked with environmental experts who stated that allowable arsenic levels listed on the test results were for drinking water standards, not soil standards, and may not be as concerning to soil levels of a development area. Mr. Gridley clarified that D.E.Q provides several options including scraping the contaminated soil and using it for footings or under parking lots and/or bringing in new materials. He clarified that based on the use of the property the soil would not need to be hauled away. They did recommend the City review the property for potential spill areas that would be more concerning. Councilmember Miller clarified that in some cases asphalt could be a sealant/remediation such as a trail which is intended for this property. Mr. Gridley confirmed that was an option frequently used for remediation.

ROLL CALL: Miller Aye; McEvers Aye; Edinger Aye; Gookin Aye; Evans Aye; Adams Aye.
Motion carried.

PUBLIC HEARING ZC-4-14 – ZONE CHANGE FROM C-17 TO R-3 AT 3201 HUETTER ROAD.

STAFF REPORT: City Planner Tami Stroud explained that that the applicant is requesting a zone change from C-17 to R-3 for property located at the corner of Mill River and E. Maplewood Avenue. There are four findings required including; that this proposal is or is not in conformance with Comprehensive Plan policies; that the public facilities and utilities are or are not available and adequate for the proposed use; that the physical characteristics of the site do or do not make it suitable for the request at this time; that the proposal would or would not adversely affect the surrounding neighborhood with regard to traffic, neighborhood character and/or existing land uses. There are no recommended conditions requested with this zone change request. Ms. Stroud explained that the Comprehensive Plan states that it is a stable established neighborhood with a multitude of changes expected for many years. The property currently has one office building structure and abuts current single family homes; the currently zoning is C-17PUD which abuts R-3PUD zoning.

PUBLIC COMMENTS: Mayor Widmyer called for public comments.

APPLICANT: Darius Ruen of Ruen-Yeager stated that he was speaking on behalf of the owner and reiterated that that their intent is to develop the four southern lots into residential units and clarified that the improvements are already installed and the road will be extended. He felt this was a pretty straight forward request.

Jim Stafford, Coeur d'Alene, stated that he owns a home in the Mill River Subdivision and that all the homes within the area, except those four homes, are within the homeowner's association. He expressed concern over the impact it would have for the association to have no authority over the development of those lots, as they should follow the same rules as the rest of the development.

Ms. Stroud stated that these lots would be included in the homeowners association. Deputy City Attorney Warren Wilson stated that a homeowners association would have CC&R's that would dictate what property would be included in the association. Mr. Stafford is concerned that it is not a requirement of the City Council that the lots are members of the homeowners association. Mr. Wilson stated that occasionally they will require an association to maintain common areas, and does not know if this property is subject to that requirement. He explained that the property is subject to the rules of the Planned Unit Development (PUD) and the zone change is not required for residential development, the owners wanted to do it for the peace of mind for the neighbors to ensure future development would not revert back to commercial. Mr. Wilson stated that there is a condition on the PUD to create a new association or join an existing one. Mr. Stafford reiterated that he is concerned that it would not have the same fit as the existing homes. Mayor Widmyer clarified that the existing homes were built in conformance to the PUD requirements, regard setbacks, height, etc. Councilmember Miller asked for clarification as to the current zone and what type of construction could have been built on the property. Mr. Wilson stated that the current zone of C-17 can include any type of retail, 17 residential units per acre of multi-family and is a very broad zoning category.

APPLICANT REBUTTAL: Mr. Ruen clarified that it is the owner's intent to reach out to the existing Homeowner's Association and seek to join their group and comply with existing PUD requirements.

Mayor Widmyer closed public comments.

MOTION: Motion by McEvers, seconded by Miller to approve the requested zone change from C-17 to R-3PUD at 3201 Huetter Road, and direct staff to prepare the Findings and Order.

DISCUSSION: Councilmember Gookin asked for information regarding the deviations included in the R-3PUD to the south. Ms. Stroud clarified that there were some height variations along the river, deviations to setback, and allowance of multifamily housing along Seltice Way.

ROLL CALL: Adams Aye; McEvers Aye; Miller Aye, Gookin Aye; Evans Aye; Edinger Aye.
Motion carried.

PUBLIC HEARING - AA-1-14 - Administrative Appeal – Interpretation of Municipal Code Section 17.07.1020(B) (1) – Pocket Housing access from alleyway by Miller Stauffer Properties, Inc.

STAFF REPORT: Mr. Wilson explained that this is the type of item we do not see often. The Municipal Code allows for the appeal of an interpretation of city code. This appeal stems from a literal reading of the alley access requirements for pocket housing. The code states that if there is an alley then parking access should come from the alley, with the intent to make parking as unobtrusive as possible. This specific development has street frontage on a public street and lots abutting an alley. He informed the Council that it has the ability to interpret the wording and intent behind the code.

PUBLIC COMMENTS: Mayor Widmyer called for public comments.

Dick Stauffer, Coeur d'Alene, stated that he represents the applicant and believes that this is a new Ordinance that can be applied differently and that this type of development (with access off of both the alley and the street) was not anticipated when the Ordinance was created. The purpose behind pocket housing is to create more efficient use of land, and to stimulate new housing compatible with surrounding development. He clarified that the current use of the land is a parking lot and that all other design standards and requirements are being met by the development. The developer is proposing to use north south lots in an east west alignment. He believes it is a good infill development.

Mayor Widmyer closed public comments.

MOTION: Motion by McEvers, seconded by Edinger to approve the administrative appeal AA-1-14.

DISCUSSION: Councilmember McEvers asked for examples of other pocket housing developments that have worked with the alley access parking. Mr. Wilson explained that all of the developments are a bit different and some had alley access and some did not. He clarified that the proposed product makes sense but the code does not currently allow for it to access parking off of the street. Mr. Wilson further explained that if the Council thinks this type of access meets the intent of the code he would recommend the planning staff come forward with a code amendment. It could be deemed that the intent of the code was that alley access be required for parking abutting the alley. Councilmember Adams asked if the appeal were denied would the developer need to rotate the development. Mr. Stauffer stated that the proposed development is the right way to go for the location and that if it were denied they would have to look at the entire development.

Mr. Wilson clarified that there is existing code language regarding design review requirements that allows for design departures that could be used for a similar process in the pocket housing code. Councilmember McEvers stated that the term thoughtful development applies to this development and pocket housing should have some flexibility.

ROLL CALL: McEvers Aye; Miller Aye, Gookin Aye; Evans Aye; Edinger Aye; Adams Aye.
Motion carried.

RECESS: Motion by Gookin, seconded by Evans to immediately recess to a workshop with the City's Legislative Committee to review potentially proposed legislation in the Library Community Room located at 702 Front Avenue. **Motion Carried.**

The meeting adjourned at 7:49 p.m.

Steve Widmyer, Mayor

ATTEST:

Renata McLeod, City Clerk