

**City of Port Orford
City Council Meeting Minutes
In the Gable Chambers
Thursday, May 21, 2020 at 9:30 P.M.**

Mayor and Council	Present	City Staff	Present
<i>Tim Pogwizd, Mayor</i>	Excused	<i>Terrie Richards, City Admin/Recorder</i>	X
<i>Gary Burns</i>	X	<i>Shala Kudlac, City Attorney</i>	X
<i>Pat Cox, President</i>	X	<i>David Johnson, Finance</i>	X
<i>Travis Williams</i>	X	<i>Chief H. Hobart</i>	X
<i>James Garratt</i>	X		
<i>Carolyn LaRoche</i>	X		

Media Present:

Others Present: Penny Suess, Bill Kloos, Kevin McHugh

1. Call to Order

Councilor Cox called to order this Regular Meeting of the Common Council on Thursday, May 21, 2020 at 9:30 a.m. The meeting is held via internet connection due to COVID-19 restrictions set in place by the State of Oregon.

2. Additions to the Agenda: None.

3. Consent Calendar – Councilor LaRoche moved to approve the consent calendars for April 16, 2020; April 30, 2020; May 8, 2020 as written with Councilor Burns as second. ***Motion carried 4-0***

Councilor Burns Yes *Councilor LaRoche* Yes *Councilor Williams* Yes
Councilor Cox Yes *Councilor Garratt* Abstain

4. Citizen Concerns: None.

5. Appeal Conditional Use Permits 16-02/16-03 to Develop Pump and Pipeline for Purpose of Delivering Recycled Wastewater.

Attorney Kudlac summarized this is the time is to hear the appeal of the extension of time on conditional use permit 16-02 and conditional use permit 16-03. This was a decision made by the Planning Commission on March 10, 2020.

Declarations regarding conflict of interest, bias or extensions: None.

Councilors have a packet containing information on the original decision made, extensions granted previously, record of the Planning Commission meeting on March 10, 2020, notices

of appeal and submissions by appellate, Ms. Suess, as well as arguments from Bill Kloos's office on behalf of the applicant. Councilors will receive appellate's argument and response from the applicant to make a decision based on the items in the packet.

Appellate Statements: Ms. Suess read into the record her testimony opposing the extension. "To the Council and to the City Attorney. Thank you for allowing me to speak. I wanted to appeal this decision of the planning commission, because I believe that the decision was in error and that the extension for both of these CUPs is illegal. In March, Elk River Property Development, ERPD, requested and received a third extension on his Port Orford permits for effluent pipeline alternatives. The pipeline is meant to serve the golf course proposed for a location outside the city. ERPD said they needed this third extension in order to continue working with the Department of Environmental Quality, DEQ, on a water pollution control facilities permit. It is not an allowable reason to grant an extension on the CUPs. What is more important, only one extension is allowable in the first place. This extension was granted in 2018. A second extension that was granted in 2019 was done so in violation of the Port Orford municipal code. The Planning Commission approval of yet a third extension was also clearly in error. ERPD claimed yet again a need for more time "to finalize the plans, maps and equipment used for the application of a treated effluent for irrigation purposes." But, such permits typically do not require years and years of work. Obviously, there are problems with the golf course project that call into question whether it will ever be completed. Port Orford's municipal code allows one extension of a CUP when certain conditions are met, but such extensions shall not exceed one year. I quote from Chapter 17.32, conditional uses; 17.32.060 Time Limit on a Permit for Conditional Use: Authorization of a conditional use shall be void after one year or such lesser time as the authorization may specify unless substantial construction has taken place; however, the planning commission extended authorization for an additional period not to exceed one year upon written application to the Planning Commission. This is ordinance 278, paragraph 6050 1977. ERPD received two extensions of these CUPs in 2018 and 2019 each time for a year. It was a violation of municipal code that I just quoted to grant the extension in 2019 as well as in 2020, because the code only allows extensions that total one year from the original approval. The only exception to this one-year rule is if substantial construction has taken place. No construction at all has taken place to date on any portion of the project as ERPD stated in March before the planning commission. The plain meaning of construction does not entail obtaining a permit, and even if it did, obtaining one permit is not substantial construction. The plain meaning of substantial construction implies actual on-the-ground work. Moreover, the purpose of the extension provision is that CUPs would not drag on for years and allow developers to sit on their hands. Context from other uses of construction, the term construction, support the argument that substantial construction refers to actual on-the-ground construction. Two things are then clear: 1) Allowing extensions to continue indefinitely is explicitly prohibited by the municipal code. 2) Efforts to obtain permits do not qualify as substantial construction or other wise serve as an exception to the one-year rule on extensions. Therefore, the appeal must be upheld and the conditional use permits for the pipeline alternatives must be declared void by the city council. Thank you."

Applicant's representative, Bill Kloos responded to the statement from the appellate that applicant has been "sitting on his hands for years." Mr. Kloos explains that the applicant has been starting the golf course and defending lawsuits brought by Oregon Coastal Alliance and fellow travelers. They have also been hustling to get the permits needed to finish the project and put the recycled wastewater to work. In reference to Mr. Kloos's previous letter, there are three LUBA opinions. Two were ORCA challenges to counties approval of the golf course. The second opinion affirmed the golf course approval. The third opinion unsuccessfully challenged the companion approval by the county to use the recycled wastewater by way of a pipeline on county property. The county found the golf course construction approval was vested, which gives the client the right to complete the golf course. They are now seeking city approval, which requires an extension. The critical point is the original 2017 approval of the pipeline included condition N, which was to restrict work on the pipeline project until all permits are obtained including DEQ. DEQ has not finished processing the permit for the pipeline. City and county approval is a land-use matter. DEQ approval is a technical matter. The applicant cannot control when DEQ will issue the permit. At some point, there will be a public hearing and issuance of the DEQ permit at which time construction for the pipeline can begin. Mr. Kloos states the city code is ambiguous on the one-year duration of extension. It can be read as one one-year extension and another way is multiple extensions each one of which can be no longer than a year. That is how the applicant reads the code. Due to condition N restricting construction on the pipeline until permits are acquired negates the need for an extension since construction cannot start until DEQ has issued the permit.

Questions from council:

Councilor Garratt asked Attorney Kudlac for her interpretation of the section of code 17.32.060, Time Limit on a Permit Conditional Use. Attorney Kudlac responded with her interpretation that an extension is valid for one year. She does not read that it only allows to give one extension. She interprets that it modifies the duration of the extension as many times as you can get one, which coincides with the previous extensions given on this application. Councilor Garratt agrees with the interpretation.

Without further questions heard, Councilor Cox closed the public hearing.

Councilor deliberations:

Councilor Burns moved to approve the extension of time on the CUP 16.02 and CUP 16.03, Elk River Property Development based on Shala's interpretation of the municipal ordinance 32.060 referencing the time limit on conditional permit use with Councilor Garratt as second.

Motion carried 4-1

Discussion: Councilor Garratt stated that he feels this is an acceptable method of interpreting this ordinance and council should continue to interpret it the same as it has been in the past.

Councilor LaRoche asks if they can keep getting extensions with planning approval.

Attorney Kudlac stated they can if planning approves the extension. Councilor LaRoche is

concerned that the Planning Commission does not have a complete understanding of what the extension is. She does not like to see the Planning Commission tied up repeatedly on this. She feels the applicant has had a long time.

Councilor Burns wondered what problem the multiple extensions are causing. None were revealed.

Councilor Williams agreed with Attorney Kudlac's interpretation of the code. He agreed the development cannot proceed without DEQ approval, so this becomes part of the process. He also stated if City Council were to deny the application, the applicant would have to come back through the application process, which takes significantly more time from the Planning Commission and City Council.

Councilor Burns Yes *Councilor LaRoche* No *Councilor Williams* Yes
Councilor Cox Yes *Councilor Garratt* Yes

6. Old Business:

a. Dyer Partnership Engineering Services Agreement:

Councilor Cox asked if additional bids were received since previous meeting. CA Richards replied that no additional bids have been obtained. She has been in contact with Civil West Engineering. They will give a bid if asked. Councilor Cox suggested tabling this and pursue RFP from other sources.

Councilor Williams suggested holding off on the Dyer contract until additional information is received from other contractors.

The grit system repair is discussed.

Councilor Cox moved to table the Dyer contract until more information is received about the current projects with Councilor Williams as second. ***Motion carried 5-0.***

Councilor Burns Yes *Councilor LaRoche* Yes *Councilor Williams* Yes
Councilor Cox Yes *Councilor Garratt* Yes

Discussion: Councilor Burns would like other engineering firms be contacted. He would like to see who nearby cities use for engineering and get their recommendations.

Consensus is taken to move forward getting RFPs from engineers. ***Consensus passed 5-0.***

Staff is asked to contact OAWU to ask about how to move forward with the grit system. ***Consensus passed 5-0.***

b. Emergency Preparedness:

Councilor Burns is researching the county emergency operations plan as a tool for a useable manual. Council will need to put together an incident command team, identify scenarios and create possible responses. Employees will need training on how to respond to emergencies. Once the manual is complete, council will need to agree on it and meet on a yearly basis, at least, to keep it up to date and in place. He is hoping that if the

marijuana tax passes a portion will go to emergency preparedness. Councilor Burns feels it is a little early for volunteers but will keep council informed.

7. New Business:

a. Resolution 2020-10 Annual Adjustment for SDCs:

Councilor Garratt moved to approve resolution 2020-10 with Councilor Burns as second.

Motion carried 5-0.

Discussion: None

Councilor Burns ***Yes*** ***Councilor LaRoche*** ***Yes*** ***Councilor Williams*** ***Yes***
Councilor Cox ***Yes*** ***Councilor Garratt*** ***Yes***

b. Resolution 2020-12 Volunteer Worker’s Compensation:

Councilor Garratt moved to approve resolution 2020-12 with Councilor Burns as second.

Motion carried 5-0.

Discussion: None.

Councilor Burns ***Yes*** ***Councilor LaRoche*** ***Yes*** ***Councilor Williams*** ***Yes***
Councilor Cox ***Yes*** ***Councilor Garratt*** ***Yes***

c. Right-of-Way Requests – Ed Houck, Tom Calvanese, Ken Gibson

Kevin McHugh is given permission to speak on right-of-ways. Councilors agree by consensus to allow Mr. McHugh to speak.

Ed Houck right of way – Mr. McHugh stated the application should include the approved site plan, which is where the ingress/egress locations are designated as approved. The site plan needs approved by Planning and then presented to City Council. CA Richards replies that Mr. Hauck wants to clear the brush and clean the right-of-way area that abuts the property leaving a row of shore pine between his property and the neighbor’s property. Eventually he would like ingress/egress and will have to get approval. Mr. McHugh states that in the past the planning commission has approved right of way usage permits similar to this one but with a definite time limit. Councilor Garratt agrees with the time limit.

Councilor Garratt moved to approve Ed Houck’s application with a 90-day limitation with Councilor LaRoche as second.

Discussion: Councilor Burns reported that he applied for this prior to COVID-19 restrictions and had to hold off. He suggested maybe giving him more time.

Councilor Garratt rescinded his previous motion and moved to approve Ed Houck’s application with a six-month limitation. Councilor LaRoche rescinded her second on the previous motion and seconded this motion with the six-month time limitation. ***Motion carried 5-0.***

Councilor Burns ***Yes*** ***Councilor LaRoche*** ***Yes*** ***Councilor Williams*** ***Yes***
Councilor Cox ***Yes*** ***Councilor Garratt*** ***Yes***

Tom Calvanese right-of-way – Councilor Cox stated his opinion that this one will help beautify the city by cleaning up invasive species and putting them back with native. Discussion: Kevin Mchugh addressed both Calvanese and Gibson right of way applications stating there are trees in the applications. He would like to respectfully request the council require a licensed arborist determine what trees need to be removed and how many limbs need to be cut for the mobile home access.

Tom Calvanese is not requesting any tree removal and clarifies his intention is to stabilize the steep slopes that are at risk of erosion by removing the invasive plants and promote native plants. He would like to restore and repair an existing rock wall and extend it around the property to protect from erosion. He intends to maintain this area in the future.

Councilor Burns moved to approve Tom Calvanese’s right-of-way permit request with Councilor Williams as second. **Motion carried 4-0.**

**Councilor Burns Yes Councilor LaRoche Yes Councilor Williams Yes
Councilor Cox Abstain Councilor Garratt Yes**

Ken Gibson right-of-way request – Mr. Gibson is not present.

Discussion: CA Richards relayed a conversation with Mr. Gibson this morning. Mr. Gibson wanted council to understand they were going to preserve as many trees as they possibly can. They want to limb-up some trees to allow delivery of the manufactured home without damaging the home.

Councilor Garratt stated the permit request states, “remove trees.” If it were to be approved as is, there would be no control on how many trees and location of trees cut. He would like to see the verbiage, removal of trees, amended. He would like to see clarification on the section he is going to clear.

Councilor Williams asked if CA Richards walked the site when signing off on the permit. CA Richards did not see trees marked for removal. Councilor Williams would like to see a site plan in order to move forward on the request.

Councilor LaRoche asked if there was a driveway or entrance to the property. CA Richards stated there was not one at the time she was there. CA Richards confirmed they want to clear off a route to move the mobile home onto the lot.

Councilor Garratt moved to table this right-of-way request until the next council meeting with Councilor Williams as second. **Motion carried 5-0.**

**Councilor Burns Yes Councilor LaRoche Yes Councilor Williams Yes
Councilor Cox Yes Councilor Garratt Yes**

Councilor Cox asked for a consensus on staff to direct Mr. Gibson to mark the trees he wants to take out prior to next month and mark the pathway they intend to utilize to move the house. **Consensus passed.**

d. Port Orford Arts Council TLT Grant Application:

Councilor Cox moved to approve the TLT request from the Arts Council with Council Burns as second. **Motion carried 3-2.**

Discussion: Councilor Cox reminded council this addresses the sign between Friendly Corner and Dock Road. The sign size needed verified due to the word mural. An okay was needed from adjacent property owners. CA Richards stated the neighboring properties have approved. This is a request to release the funds for TLT to move forward. Councilor Garratt does not approve of the use of the TLT funds for the sign.

Councilor LaRoche does not approve of the sign and use of funds.

Councilor Burns Yes **Councilor LaRoche** No **Councilor Williams** Yes
Councilor Cox Yes **Councilor Garratt** No

e. New Liquor License Approval

Prior to discussion, Councilor Williams advised Council it is his license request.

Councilor Garratt moved to approve the liquor license application with Councilor Burns as second. **Motion carried 4-0**

Discussion: Councilor Williams stated this is for the front of the diner. It is an off-premise license. It is take and leave. There is no on-premise drinking in the diner.

Councilor Burns Yes **Councilor LaRoche** Yes **Councilor Williams** Abstain
Councilor Cox Yes **Councilor Garratt** Yes

8. Considerations:

Citizens: None.

Staff: CA Richards reported on the watershed. Erin Minster from Curry County will attend next month's meeting to address this. CA Richards suggested councilors read the information provided. Staff will need approval to get bids on the contact tank, which will help alleviate overtime funds. Dredging permit is from July through November. The dredging company will use a laser to avoid damaging the bottom liner of the pond. They are consulting an engineer for information on fixing the gate without damaging the liner. CA Richards states the Community Building is finished today. The parks restrooms are open, though the play areas are still closed. The large percentage of water loss was due to large leaks that have since been repaired.

Councilors: Councilor Garratt introduced a proposal for a seasonal 2-cent gas tax. Other cities have been very successful with the tax. It would apply to the one gas station in town from April 15 through October 15, for a six-month period. The proposal indicates 50 percent going to road repair and maintenance, 25 percent to sidewalk and expansion and 25 percent to discretionary for roads and sidewalks. Councilors agreed to add to the next month's meeting agenda.

Councilor Cox would like the contact tank agreement on next month's meeting agenda. Supported by councilors.

Councilor Burns would like a workshop to address maintenance on city facilities, discuss Duane's retirement and replacement and to address the grit system. He suggested the workshop be held on June 4. CA Richards stated June 4 conflicts with the Parks Commission meeting. Councilor LaRoche suggested Monday, June 8 from 5 to 7. The councilors agreed to the June 8 date and time.

Mayor: None.

9. Future Meetings:

Workshop Monday, June 8 from 5 to 7.

Thursday, June 18, 2020 Regular Meeting of the Common Council at 3:30 p.m. held virtually via the same link as today.

10. Adjourned

There being no further business, Mayor Pogwizd adjourned the meeting at 5:07 p.m.



Mayor Tim Pogwizd

Attest:



City Recorder, Terrie Richards