



TOWN OF BEAUX ARTS VILLAGE

TOWN COUNCIL MINUTES

Special Council Meeting
October 7, 2008
Leider

Mayor Rose called the meeting to order at 7:00 pm.

PRESENT: Mayor John Rose, Councilmembers Steve Eulau, Richard Leider, Aaron Sharp and Bruce Young. (Councilmember Carol Clemett arrived at 7:45pm)

EXCUSED: None.

STAFF: Clerk-Treasurer Sue Ann Spens, Town Planner Mona Green.

GUESTS: Planning Commissioner Jake Donoghue, WABA President Joann Bromberg, Sylvia Hobbs, Jeff Jochums, Susan Kennedy, Linda Mui, Mike Hillberg, Tom Stowe, and Paula Dix.

MINUTES: Councilmember Leider moved to approve the September 9, 2008 minutes as amended. Councilmember Young seconded.

Vote: 4 For, 0 Against, 0 Abstain. Motion carried.

WARRANTS: Clerk-Treasurer Spens reminded the Council that no warrants may be approved tonight, because this is a special meeting. The October 14 warrant list will be carried forward to the November 11 meeting and approved then.

CLERK'S REPORT:

BAV PARKING RULES: Clerk-Treasurer Spens explained that the Town's rules for parking on public property are currently contained in the Town's Zoning Code. She commented that this is not the best location for these rules for at least two reasons:

- The Zoning Code sets forth the rules for the use of *private* property. Rules for the use of public property do not really belong in this document.
- The Zoning Code is a land-use document. Anytime the Council wishes to make changes to it, the changes must first pass through the Planning Commission for review at a public hearing, before the Council can take action. This makes the process of changing rules for parking on public property onerous.

She then suggested that the Council consider asking the Planning Commission to move these rules from the Zoning Code to the new ROW Use Ordinance they are developing. The ROW Use Ordinance will be an administrative ordinance dealing with public property, so the Council can make amendments to it more easily. It was the consensus of the Council that this suggestion be forwarded to the Planning Commission.

STREAMLINED SALES TAX: Clerk-Treasurer Spens reported that changes to the collection and distribution of sales tax revenues became effective July 1, 2008 and began showing up in state-revenue distributions to cities in September 2008. She explained that because Beaux Arts' sales tax revenues are so heavily influenced by construction activities, the changes may not be obvious to us. She added that she has made arrangements to start receiving reports from the state Department of Revenue that should provide additional insight into the impact of these changes on our revenue stream.

GREEN RIVER ORDINANCE: Clerk-Treasurer Spens reported that our ordinance banning door-to-door solicitation is unconstitutional, based on recent court challenges of similar ordinances. She stated that Town Attorney Stewart recommends that the Council repeal the ordinance in its entirety and advise residents that they should post "No Soliciting" signs if they do not wish to be approached. It was the consensus of the Council that Clerk-Treasurer Spens prepare the needed ordinance and bring it forward for action at the November meeting. She will also put a notice in the Town newsletter over the next few months advising residents about the need to take action if they wish to avoid such solicitation.

CODE ENFORCEMENT: Clerk-Treasurer Spens reported that she had referred that matter of the stone pillars that seemed to be in violation of the Town's Zoning Code to the Town Building Official for further action as instructed by the Council. She noted that the Building Official determined that the pillars would be consistent with similar structures built for fencing and no further action is anticipated.

MARSHAL'S REPORT: No report.

WATER REPORT: No report.

WABA REPORT: WABA President Joann Bromberg reported that WABA plans to plant 15 trees on the beach property on November 1. She stated that the planting locations have been discussed with all adjacent property owners.

EMERGENCY PREPAREDNESS: Councilmember Eulau reported that he is still looking for one more team leader for the emergency-preparedness district in 106th Pl SE. He said that leaders and their helpers from the other EP districts gathered for an ice-cream social on October 5th and began planning for future work. He noted that the group discussed the Town's and this group's responsibilities versus each individual resident's responsibilities and that their emphasis in 2009 will be communication and the tools needed to support this effort.

Councilmember Eulau asked Clerk-Treasurer Spens about the workshop she attended on his behalf that addressed writing a Comprehensive Emergency Management Plan (CEMP) for the Town. Clerk-Treasurer Spens reported that the workshop was run by Dave Hall, Washington State Emergency Planning Program Coordinator, and was useful in identifying what the Town needs to do to be in compliance and in providing tools to accomplish these tasks. She added that she will give a copy of the materials she received and contact information to Councilmember Eulau so that he can proceed with writing the Town's CEMP using the templates provided at the workshop.

STORMWATER SYSTEM: Councilmember Sharp introduced Thalweg representatives Alan Black and Robert Elslip, who recently reviewed the Town's existing stormwater system and now have findings and recommendations to present to the Council.

Mr. Black and Mr. Elslip gave a brief review of existing stormwater regulations that apply to the Town and some of the positives and problems they found. They also directed the Council's attention to several local jurisdictions that have information or planning documents that may be useful to us.

(Councilmember Clemett arrived at 7:45pm.)

Councilmember Leider remarked that the Council started this discussion looking at the need for a comprehensive stormwater system and that it now appears that there may be more flexibility in potential solutions than originally anticipated, i.e. the Council can look beyond hard infrastructure solutions to methods for minimizing runoff.

Mayor Rose asked what the next step is. Mr. Elslip responded that his engineering firm can help the Town produce a Master Stormwater Management Plan, including an compiling an inventory of our existing system, performing some reverse engineering on problem areas to find solutions to them, and then prioritizing those solutions on the basis of urgency and cost.

Mayor Rose noted that the report does not mention taking action at the outfall end of our existing stormwater system. Mr. Elslip answered that a better solution to the outfall end is to limit the oil and sediment that reach the outfall.

Councilmember Leider commented that the Council will need to review Thalweg's report and recommendations to determine what needs to be done and then develop cost estimates for each task. He added that once that work is finished, the Council can prioritize the tasks based on the funding resources available.

Mayor Rose suggested that the Town needs a complete survey of the existing stormwater system before the Council can make any real progress on developing a Master Stormwater Management Plan. He stated that the survey should include the size and type of pipe used, elevations and inverts, locations of inlets boxes, etc. and will probably cost between \$2,500 and \$3,000. He added that this expense should be included in the 2009 Budget.

Councilmembers Sharp and Leider will review Thalweg's report and recommendations and prepare a summary for the Council's review.

JOCHUM REQUEST TO INCREASE THE ALLOWED ENCROACHMENT INTO THE UNUSED STREET ROW: Mayor Rose opened the discussion by stating that Jeff Jochums had come to the September Council meeting to express concerns about the application of certain regulations to his construction project. Specifically, Mr. Jochums was concerned that the Building Official has advised him to remove pavers from the ROW adjacent to his property because the Council had not given permission for their placement.

Mayor Rose added that Mr. Jochums was advised to prepare a written summary of the situation and his request for the Council's review at this meeting. He noted that Mr. Jochums subsequently prepared a document for the Council that explains his request and the reasons for it, which the Council finds before them tonight. He then explained that for this agenda item, the Council will:

- hear an update on any changes since the original submission, if any, from Mr. Jochums,
- hear comments from the public, limited to three minutes each, and
- discuss the issue and make a decision.

Mayor Rose asked Mr. Jochums if anything substantive has changed since his written request was submitted. Mr. Jochums answered that some of the items listed as needing correction in the Building Official's memo have been addressed. Specifically, the rockery has been pulled back to the property line, and most of the irrigation has been removed from the Town ROW. He explained that action on the other items, i.e. whether to remove the permeable pavers and landscaping from the ROW, depends on the Council's decision tonight.

Mayor Rose then asked for comments from the public.

Sylvia Hobbs commented that the Jochums pavers intrude upon a Town ROW that is an unused street, which is different from the typical ROW that sits between someone's property and the paved roadway. She stated that this particular ROW has a long history of use as a green space, gave details about actions taken since 1965 to preserve that green space, and noted that about five years ago a path was placed in this ROW during a Town clean up to further enhance the space. She also stated that just before this path was constructed, the Town took action requiring three adjacent owners to remove improvements from this ROW.

Mrs. Hobbs remarked that the Jochums have been informed that they could not improve this ROW without Council permission on several occasions, including once when Mr. Jochums came to a Planning Commission seeking a change in the Zoning Code that would allow his new home to be built in the first place. She concluded by stating that she objects to allowing any paved parking in this ROW, particularly since the parking pad sits higher in elevation than the path, and that now more than ever, the Town needs to protect the public lands and preserve them for public use, not allow adjacent owners to continue to take them over for private use.

Paula Dix commented that agrees with Mrs. Hobbs' concerns. She remarked that there were extensive negotiations conducted in the late 1990s to reclaim public ROWs after a Town survey revealed a large number of significant intrusions. She added that she thinks the Town needs to continue to limit such intrusions to a minimum.

Mayor Rose asked for additional comments from the public. As there were none, he asked the Council if they had questions for the applicant or any staff in attendance.

Councilmember Sharp asked Town Planner Mona Green to address issues of ingress and egress. Ms. Green began by noting that the plan review for this project was limited to the improvements on private property, but that there has always been an understanding that some

encroachment upon an adjacent ROW is needed for driveway access. She acknowledged that this property has always used a portion of unused street ROW for its access and the plan review took that fact into account. She then stated that the driveway improvements placed by the Jochums exceed mere replacement of the previous access-use by using pavers instead of gravel and that this excess is what triggered the need for the Jochums appearance tonight. She added that the original plans submitted for review showed parking on the applicant's property, as required by the Zoning Code, and that changes on site that were made without prior approval have caused the need for the expansion of the parking area into the ROW.

Councilmember Leider asked if any restrictions were placed on the applicant to limit their use of the 104th Ave ROW when the permit was approved for issue. Ms. Green answered that forcing the applicant to move the entrance to their property would have caused the removal of several trees, so the applicant was not explicitly limited because the expectation was that the applicant would continue to use the existing gravel footprint for that access and not that they would replace it with engineered pavers.

Councilmember Sharp asked how our codes address ROW development. Ms. Green answered that the codes do not explicitly address such development and that in this case no ROW access was requested, so the review did not address that aspect. Clerk-Treasurer Spens reminded the Council that because the ROW is public property, adjacent owners are expected to ask for permission to use it prior to doing so. She noted that a property owner would not expand their parking onto someone else's private property without permission so why should they be allowed to expand onto the public property without giving the same consideration.

After some additional discussion, Mayor Rose suggested that the Council can choose to take no action, in which case the Jochums must comply with the Building Official's requirements as listed in her letter, or the Council may exempt the Jochums from compliance with certain requirements set by the Building Official in that letter. He then asked Councilmembers for their thoughts.

Councilmember Leider stated that he thinks the pavers, landscaping, rockery, and irrigation are separate issues. He added that he probably would have voted to allow the pavers, though he's not sure how much higher they are than the original gravel pad. He remarked that he is less inclined to allow landscaping, rockeries, and irrigation systems in the ROW.

Councilmember Clemett stated that she agrees with Councilmember Leider's comments about the landscaping, particularly in light of Deputy Clerk Kulp's email to the Jochums telling them of the need to request permission from the Council before placing any landscaping in that ROW.

Councilmember Sharp stated that he would like to know what would have been allowed if the gravel were just replaced.

Councilmember Leider stated that he would like to wait until the November Council meeting to make a decision on this question. He remarked that he would like time to visit the site and view the improvements that have already been installed. He added that he would ask that

this discussion not delay the owners in obtaining their Certificate of Occupancy. It was the consensus of the Council that such a delay would pose problems for the Jochums to complete and take occupancy of their new home.

MOTION: Councilmember Leider moved to allow conditional approval of the pavers as follows:

1. That portion of the driveway that is needed for safe ingress/egress would get full approval.
2. That portion of the driveway / parking area that is outside the area described in #1 will be removed at the owner's expense immediately if so requested by the Town.

Councilmember Sharp seconded.

On discussion, Mayor Rose asked how to determine the area needed for safe ingress/egress. It was suggested that an architect or engineer could help answer that question.

After further discussion, it became clear that Councilmembers needed to view the site in person before making a final decision.

MOTION: Councilmember Clemett moved to table further discussion of and action on this request until Sunday at 5:30pm. Councilmember Leider seconded.

Vote: 5 For, 0 Against, 0 Abstain. Motion carried.

Further discussion and action on the original motion is tabled until Sunday October 12, 2008 at 5:30 pm. Councilmembers will gather at Councilmember Leider's house and move *en masse* to the Jochums project site for a site visit before taking final action. Clerk-Treasurer Spens will post an agenda on mailstands asap to announce the continuation of this agenda item. She will also arrange for Deputy Clerk Kulp to attend the meeting in the event that Ms. Spens is not available.

PRIVATE IMPROVEMENTS ON TOWN ROW: Clerk-Treasurer Spens noted that this topic comes before the Council tonight, because the Planning Commission wants feedback on their minor revisions to the outlined sent to them by the Council about this topic. She added that these revisions were presented to the Council in September and the Council decided that the discussion would be more productive if a member of the Planning Commission attended the Council meeting, which postponed further discussion until this evening. She commented that Planning Commissioner Jake Donoghue is attending the meeting tonight for the purposes of this discussion.

Planning Commissioner Donoghue opened the discussion by stating that the Planning Commission felt the list provided to them was very complete but still needed some refinements and that members of the Commission wanted to be sure the refinements they proposed were in line with the Council's thinking about this issue.

Councilmember Clemett commented that she agrees with the direction the Planning Commission seems to be taking and wants to be sure that the rules for landscaping impose limits such that the use of invasive species (e.g. holly, ivy, laurel) is prohibited, that fences are not allowed in the ROW, and that there is a distinction made between ROWs between a paved street and private property and unused street ROWs, which constitute most of the

Town's green space.

Councilmember Sharp stated that he would like the proposed ordinance to address the differences between pavers and compacted soils, particularly in light of the Council's upcoming work on the Town stormwater system. He suggested that the ordinance regulate permeability and water retention capability as well as appearance.

Planning Commissioner Donoghue thanked the Council for their input and reported that he will take the Council's comments back to the Commission for further discussion.

PUBLIC HEARING: PRELIMINARY 2009 BUDGET: Mayor Rose opened the public hearing at 9:55pm. Councilmember Leider presented the current estimates for revenues and expenditures in 2008, noting that revenues are higher than anticipated and expenditures are at or under budget, resulting in an estimated surplus for the year of \$22,000. He then distributed charts and graphs illustrating a summary of revenues and expenditures for 2001 – 2009 and trends for that period. He then noted that while the budget for 2009 is not currently balanced, he hopes to fine tune it to achieve that goal in the proposed budget that will be presented to the Council for discussion in November. He added that the Council will act on the 2009 Property-Tax Levy at the November meeting and that he would like the Council to end their session with an Executive Session to discuss personnel issues, including compensation for 2009.

PROPOSED AMENDMENTS TO THE TREE ORDINANCE: Clerk-Treasurer Spens reported that she had hoped the Council could address the minor revisions needed without having to send the proposed amendments to the Planning Commission, but Town Attorney Stewart has advised that is not possible. She stated that the ordinance has been amended in "strikethrough" format to make it easy for the Planning Commission to understand the changes. It was the consensus of the Council that the amended ordinance be sent to the Planning Commission for review and recommendation with the request that the task be handled swiftly.

PROPOSED FALL CLEAN-UP PROJECTS: Councilmember Sharp noted that he will handle this discussion since Councilmember Clemett had to leave early. He then summarized the idea of opening up other unused street ROWs to the public, much as the 104th ROW has been. He explained that opening the 107th/108th ROW would create a path through the Village to bus stops along 108th Ave SE.

Tom Stowe asked if the path needs to be ADA compliant. Clerk-Treasurer Spens answered that Town Attorney Stewart advises that the path need not be ADA compliant provided the improvements are kept to a minimum.

Susan Kennedy stated that she lives near this ROW and is concerned that opening it will create a security problem. She added that there doesn't seem to be a compelling reason to open it.

Linda Mui stated that she lives right next to the ROW and is also concerned about security.

She added that she doesn't think the increased risk to the immediate neighbors is worth the improved access to 108th. Mike Hillberg, Ms. Mui's husband, added that he is concerned that opening the path gives a path for quick exit and increases the number of hiding places available to thieves.

Councilmember Sharp asked if there were alternatives the Council could consider. Mr. Hillberg answered that he had no counterproposals other than green plantings.

Tom Stowe added that he would prefer the Town spend the money to clean up the 108th Ave ROW instead as it hasn't been addressed in several years.

Mayor Rose reported that he received calls from two other residents, Deitrich and Lowry, in opposition to the proposal.

Councilmember Sharp stated that based on public testimony tonight, the public does not support opening the ROW from 107th to 108th. He will call Councilmember Clemett to pass on that information. He added that the Fall Clean Up is planned for Saturday October 25, 2008.

NO-WAKE ZONE AND BUOYS: It was the consensus of the Council to continue discussion of this agenda item until the November meeting in light of the lengthy agenda for tonight's meeting.

WABA PROPOSAL FOR SHARED RECORDS STORAGE: Mayor Rose stated that he was contacted recently by WABA President Joann Bromberg about developing shared records storage for both WABA records and the Town's records. He added that currently the Town's records are stored at the clerk's homes.

Joann Bromberg explained that WABA has stored their records in a resident's home for many years but recently moved their files to a storage facility in Factoria that is climate controlled and has some room for the History Committee to work. She added that this solution is workable but expensive and that when WABA began looking at alternatives for constructing a storage space for their records, the History Committee suggested that the Town might be interested in sharing the space.

She explained that the unit under consideration is a prefabricated and meant to be placed on a small concrete pad. WABA is suggesting that they will provide the land for the unit and is asking the Town to purchase and install it at a cost of between \$18,000 and \$20,000. She added that WABA and the Town would need a formal agreement outlining who pays for various operating costs, including maintenance, utilities, etc.

Councilmember Leider commented that he likes that the Council is discussing the issue, because we need to do something more formal to protect our essential records. He added that before discussing this idea further, he would like to investigate the cost of renting a heated storage space and also to consider ways to construct a building like this for less. He added that there may be someone in the Village who could develop a simple design that volunteer

labor could construct for significantly less than the price of this pre-fabbed unit, especially considering the challenging economic times that are ahead. He offered to work with Ms. Bromberg to flesh out this proposal and explore alternatives.

MAYOR AND COUNCILMEMBER REPORTS:

EFFECT OF ECONOMIC CONDITIONS ON BUILDING PROJECTS: Mayor Rose reported that at the last Mayors Meeting, Clyde Hill announced that they are now requiring that contractors post bonds guaranteeing completion of their project, because several projects that have been started in Clyde Hill now stand unfinished.

HEARING EXAMINER: Mayor Rose reported that the other Points Communities now use a Hearing Examiner instead of a Board of Adjustment. He noted that the communities find the variance process much simpler with a Hearing Examiner and the applicant reimburses the Town for all costs associated with the request. He added that he isn't advocating such a change, but that he wants the Council to be aware of other options.

TOWN ARBORIST: Councilmember Young reported that Tina Cohen is willing to serve as the Town Arborist and asked what the next step is. Clerk-Treasurer Spens reported she will work with Ms. Cohen to develop a contract, including fees, and bring it to the Council for review and approval shortly.

COUNCILMEMBER YOUNG RESIGNATION: Councilmember Young reported that he has enjoyed working with the Council, but finds that he has many other demands on his time and attention. He announced that he would like to resign effective November 10, 2008 provided his replacement can be found by then. Mayor Rose accepted Councilmember Young's resignation with regret and asked for ideas from the Council for replacements. He will ask that an item be placed in the upcoming newsletter and on mailstands letting residents know of the vacancy and asking interested parties to contact him.

NEXT MEETING: Clerk-Treasurer Spens reminded the Council that the next Council meeting will begin at 5:30pm on October 12th to complete the question of the Jochums request at Rick Leider's house and the next regular meeting of the Council will be held at 7:00pm on Tuesday November 11, 2008 at John Rose's house.

ADJOURN: Councilmember Leider moved to adjourn the meeting at 10:30 pm. Councilmember Sharp seconded.
Vote: 4 For, 0 Against, 0 Abstain. Motion carried.

Respectfully submitted,

Sue Ann Spens
Clerk-Treasurer