

7:00 pm

March 16, 2016

**601st MEETING OF THE
HORSESHOE BEND CITY COUNCIL**

Mayor Hanson called the meeting to order with Councilpersons Cooper, Green, and Riley present. Also present, City Clerk Tracy Wright and Attorney Anthony Pantera.

Pledge of Allegiance

Councilwoman Cooper **moved** to approve the agenda with the addition of Executive Session 74-206, 1(F). Councilwoman Green **seconded**. All ayes. **Motion carried**.

Councilman Riley **moved** to approve the minutes of the February 17, 2016 meeting of the City Council. Councilwoman Green **seconded**. All ayes. Motion carried. Councilwoman Cooper moved to approve the minutes of the February 24, 2016 special meeting of the City Council. Councilman Riley **seconded**. All ayes. **Motion carried**. Councilwoman Green **moved** to approve the minutes of the March 15, 2016 EMS meeting of the City Council. Councilwoman Cooper **seconded**. All ayes. **Motion carried**.

Treasurer's Report:

Treasurer Terri Lawson presented the bills for review and a written report to the Council. Councilwoman Cooper **moved** to pay the bills as presented. Councilwoman Green **seconded**. All ayes. **Motion carried**.

Public Hearing 1:

Opened at 7:06 p.m.

Continuance: Acacia Fisher- CUP for daycare business at 148 Dovetail Way
Acacia Fisher is withdrawing her application for a CUP to operate a daycare business at 148 Dovetail Way. Councilwoman Green **moved** to approve the withdrawal of Acacia Fisher's application. Councilwoman Cooper **seconded**. All ayes. **Motion carried**.

Closed at 7:08 p.m.

Public Hearing 2:

Opened at 7:09 p.m.

Continuance: Bellebriand- PUD & CUP for multiple business & residential use at 447 Hwy 55

Chad Lamer, attorney with SpinkButler, 251 E Front Street Suite 100, represents the applicant. He thanks City attorney Tony Pantera, City Engineer Amy Woodruff and City staff. This application is different since it is a PUD including a CUP for a residential use. The business use is a right per City code. The Residential use in a C2 (commercial) zoning requires a CUP. The application has a revised site plan for parking to include 11 spaces that meets City code. The PUD for the business includes the top level with a 900sqft full service salon and an 800sqft

coffee and gift shop. The lower level includes 129sqft of office space and a 500sqft residence. Mr. Lamer refers to the floor plans (**Exhibit A**) pointing out that clients and surrounding neighbors would not know a residence is on the property since it is located in the basement and that it would not compromise the commercial look. Mr. Lamer refers to L1 site plan showing the parking layout of the 11 spaces. There are 8 spaces towards the alley and 3 along the south side of the building. 10% of open space is required in a PUD and there is 60sqft of open landscape which will satisfy the requirement. The application for the PUD is in accordance with the City's Comprehensive Plan.

Mr. Lamer reads Staff Report, Page 6, Section V- Findings of Facts. The property is found to be compatible with land uses that are allowed in a Commercial 2 zone. Living activity will be compatible with surrounding uses, both existing and future. The applicant agrees to keep the residence in the specified area with no storing of personal belongings outside. The applicant requests to have a bike rack to allow for a place to store bikes for the traveling public. The application has further compliance with the goals and policies of the Comp. Plan. This project brings all the uses into one building. Chapter 3 goal: residents should be able to seek housing in a neighborhood of their choice. Chapter 4 goal: to encourage business with limited impact to the community. This application fits because it reuses an already existing building. The project will provide 3 new businesses in one site and will provide jobs for the community. The residential use does not conflict with environmental factors. The residential use cannot expand and is limited to a caretaker quarters.

Exhibit B: Staff Report

Exhibit C: Conditions (presented by Chad Lamer)

Chad Lamer continues with Page 13 of Staff Report.

#1: The applicant agrees.

#2: The applicant would like to modify with Exhibit C(2). Tony Pantera, City Attorney, clarifies that per City Code 9-7-08.1 a CUP is tied to the property and if sold the new owners would be required to appear before the City for a continuance of the CUP.

#3: The applicant is agreeable that the residential area is for use in a caretaker capacity.

#4: The applicant agrees, but would like a bike rack and large items to be screened.

#5: The applicant agrees.

The written comments that have been submitted are related to already existing business. This is a free market and to reject the application based on existing businesses is against State law.

Amy Woodruff, City Engineer, 422 S 9th, Caldwell, requests a copy of Exhibit C from Mr. Lamer. Amy reads into the record a written comment received by the U.S. Post Office. Parking on the east side of the property was approved for Mr. Cazier and the City finds that is a valid approval that is on file. The Post Office did visit with the City at that time of Mr. Cazier's application. Pages 6, 7 and 8 name open spaces as part of the PUD and the building proposed is existing. The applicant submitted all drawings and etc. as required by the conditions A-I. Amy reads Section 9-16-06 for processing an application. The general concept of community design addressed by the Comp. Plan staff finds that it is a more traditional type of PUD, but that the Comp. Plan does not address mixing retail, food service and residential all in one building. The drive through will be removed and additional parking spaces will be added. The residence is

allowed by CUP in a PUD. Amy reads 9-16-08 for requirements for final plans. The bike rack is probably a great idea but other personal items are not consistent with a C2 zone. Amy reads part of the Staff Report on the residential use and clarifies that the space is not permitted as a CUP with a renter. The applicant applied for a caretaker for the building and not as a 4th business. It was implied that there is ample parking which there is not. There appears to be enough parking but it is not ample.

Councilwoman Green- asks if there will be issues with the drainage without the drive through canopy.

Amy Woodruff- The applicant will submit engineered drawing which is requirement per City code. They will need to do significant work to make 3 parking spaces on the south side of the building.

Verbal Testimony:

Britteny Kennedy -OPPOSED- not testify

Rindy Quijas –OPPOSED- Rindy Quijas, 111 Private Drive, has owned her coffee shop for 10 years and works 5-6 days a week to keep her head above water. She had asked for a gazebo for people who wished to park their vehicle and sit out and drink their coffee but it was denied.

Competition is good but not when it could wipe another business out.

Stephen Whiteley- 123 Boise Street, Parking has been resolved but he is confused on how it went from 13 spaces to 11. He thought Mr. Lamer had creative reasonings for an approval. A caretaker residence on site is what every business would want. Mr. Whiteley is not opposed to the residence and the businesses are good. He does have concerns on how the decrease in parking spaces will affect his business since his is next door.

Mike Dunlap- NUETRAL- not testify

Written Testimony:

Tony Pantera, reads into the record the written testimony that was received.

Exhibit D- Jan Laufenburg letter

Exhibit E- Suzette Womack letter

Exhibit F- Rindy Quijas letter

Exhibit G- Ciara Drake letter

Exhibit H- Andrea Mckee letter

Amy Woodruff, parking is not before the Council at this time. The applicant had originally asked for a waiver to reduce parking. It appears that there is enough parking if the site is developed to meet City code and that will be addressed with a building permit.

Tony Pantera- also not before the Council is the type of businesses proposed.

Applicant Rebuttal:

Chad Lamer thanks the citizens for their input and for the written comments that were received. He addresses Rindy Quijas's concerns for her business and reiterates that the business use is not before the Council. Her drive through business is a convenience to travelers and he does not

think she will lose business. She has loyal customers and that was evident in the written testimony. The applicant will submit design documents including drainage at the building permit stage. They were not aware of the Post Office concerns and the applicant should not be denied the use of their property since no easement exists. The applicants have spoken with Mr. Sleight who owns a property across the highway and they have a letter of intent for 6 parking spaces for the tenant of the business if the application is accepted.

Tony Pantera- Written testimony from ITD was missed and Tony reads it into the record as **Exhibit I** and gives Mr. Lamer a chance to respond.

Chad Lamer- Applicant has to conform to State code and believes this project conforms to City code. If the application is not approved Mr. Lamer requests written reasons why it wasn't and what they can do for approval.

Councilman Riley- Have conditional use permits been approved in the City before?

Amy Woodruff- Yes, but there has never been one submitted to the City for a residence in a commercial zone. As a refresher on Mr. Cazier's application, the Post Office came forward at that time and they were able to come to a neighbor agreement that allowed the Post Office mail truck use of that area. The truck comes at 5:00 am so there was no interruption during business hours.

Public Hearing closed at 8:26 p.m.

Mayor Hanson explains that this is the time for deliberations and for the Council to discuss if they agree to allow the CUP as stated or with conditions.

Tony Pantera, the Council will want to discuss development ordinance sections and deliberate on sections in City Code for PUDs and then move onto discussions on the CUP. Tony guides Council through Code sections 9-16. **Pg. 6 of the Staff Report Finding Facts- 1. Proposed Uses- (A)-** the Council does not have any concerns on if the application meets code requirements and agrees that it generally meets the code. The business is upstairs and the residence is down and there are no additions to the outside of the building. **Finding of Facts (B)-** Council agrees that it is compatible to business on the north and south. The alley on the east side provides some separation from residences. **Findings of Facts (C)-** Council agrees it meets the goals of the City Comp. Plan. A walkable City is a great idea but that is difficult to achieve with a major highway. The majority of road frontage is commercial. There are some other goals laid out for housing and diversity and the Council has no comment on them. **Chapter 5- Land Use Plans-** Staff found Comp. Plan supports the project. Council does not have any comments. They find the plan does comply with the goals of chapter 5.

9-16-03: PUD and Open Space- The applicant presents evidence that there is enough open space but staff finds there is not enough for the caretaker space. The open space requirement is recommended to be addressed in the developmental agreement. Councilwoman Green is 10%

open space required by our City or State? Tony- required by HSB City code. Council has no concerns on the open space requirement.

9-16-04 Concurrence: Not relevant

9-16-05 Intent: Building already exists. There will be interior improvements to the building. The drive through canopy will be removed. Traffic circulation will be maintained and 3 additional spaces to be developed are shown on the plans. Council has no concerns on 9-16-04.

9-16-06 Processing Application: The City Council shall determine if the proposed PUD complies with this title. The criteria to be applied for review is **Part A) Standards applicable to conditional use permits, subpart A-I.** **A)** Minimizing adverse impact on other development- Council- the property does not have room to expand and the proposed changes will be in the interior. **B)** Controlling the sequence- Does not imply. **C)** Controlling duration of use- No concerns from Council. **D)** Assuring that development is maintained property- Caretaker on site. No concern from Council. **E)** Designing the location and nature of development, including signs- City has a sign ordinance. No concerns from Council. **F)** Requiring the provision for on-site public facilities or services- Will be addressed in the CUP section. **G)** Requiring more restrictive standards than those generally required in an ordinance- Conditions will be placed on property through the CUP. **H)** Specifying the period of time for which a permit is issued and conditions which, if not followed, will bring about revocation of the CUP- Will be addressed in the CUP section. **I)** Requires mitigation of effects of the proposed use upon services delivered by any political subdivision- No concerns from Council. **Part B) General concepts of community design addressed by the Comp. Plan-** The general design and concept is a more traditional residential/commercial/mixed use type of PUD. The Comp Plan and code does not address mixing residential, office food service and a beauty salon as a PUD in a 2,000sqft building. The application is unique, and that it is broadly harmonious with Chapter 8. No concerns from Council. **Part C) Achieving compatibility and buffering internally and with neighboring uses:** The building will be improved and internal buffering will be addressed. The drive through canopy will be removed. 3 additional parking spaces will be added. This is an existing building. No concerns from Council. **Part D) Demonstrate design techniques preferable to strict adherence to terms of the Zoning Ordinance:** Applicant submitted plans and a written application and the architects are here at the meeting for any questions. No concerns from the Council.

9-16-08 Requirements for Final Plans: Requirement of plans to provide detailed and necessary specifications to construct the project. The plans generally comply with the exception of storm drainage and street improvements. **Part A)** A plan of the existing site with included features: Staff finds the plans submitted generally depicts the items listed and the plan has been submitted as Exhibit A. No concerns from Council. **Part B)** Engineered construction plans for water, sewer, storm drainage, street improvements, and nature/extent if earth work required for site preparation: Would be included in the development plan. No concerns from Council. **Part C)** Scalable plans showing building placement, use areas, common open areas, circulation details and landscaping: Plans have been submitted as Exhibit A. No concerns from Council. **Part D)** Preliminary plans including exterior elevations: No concerns from Council. **Part F)** Phasing Plans: Do not apply. **Part G)** Project documents: No separate project documents. Councilwoman Green- why it skips from D to F. Tony- explains that is how it is written in the code.

Councilman Riley- Why did the parking change from 13-11? **Tony-** parking spaces are determined by the square footage of the business type. By adjusting the interior of the businesses adjusted the parking space requirement. Compact spaces are allowed per our code. **Mayor Hanson-** two additional things came out of this discussion. One being signs which is covered under City ordinances and the bike rack will be addressed in the site plan. **Tony-** if the Council finds that the PUD complies with the requirements of 9-16-01, 9-16-02, 9-16-03, 9-16-05, 9-16-06 and direction to staff and applicant to develop a development agreement and final plan for final approval. The finding that the application complies to those code sections needs a motion and a vote. **Councilwoman Green-** our staff is saying that they have not complied with the required open space but the applicant is saying they have. **Amy-** at the time the report was written the open space was not designated. The open space was acknowledged, but the space was not designated on the plans. As a condition of the approval the Council may require they agree to develop the space or it can be put into the development agreement. **Mayor Hanson-** council may want to take a look at the conditions on page 13. The applicant went through them stating if they agreed or disagreed, which they agreed to all of them. If there are any concerns Council can add them to the conditions. **Councilwoman Cooper-** the applicant wanted to change #2. **Mayor Hanson-** Yes and that is addressed in Exhibit C. **Tony-** the conditions will be part of the CUP for the residence.

Councilman Riley moved to find the applicants PUD complies with the requirements set forth in in City Code 9-16-02, 9-16-03, 9-16-05 and 9-16-06. The Council is reserving the potential conditions imposed for the conditional residential use for subsequent deliberation. Council directs staff and applicant to prepare a developmental agreement pursuant to City Code 9-16-07, 9-16-08 and 9-16-09 that incorporate the conditional requirements that may be imposed for the final plan. **Tony-** to clarify 9-16-07, 08 and 09 are relevant to preparing a final plan for final approval. The applicant has not satisfied the requirements yet but those support the record to prepare it. Councilwoman Green **seconded**. Roll Call Councilman Riley- aye, Councilwoman Cooper- aye, Councilwoman Green- aye. **Motion carried.**

Tony- Moving on to the conditions. Staff made recommendations that there should be written development agreement between Bellebriand and the City prior to a building permit submittal. The residential use area of the structure shall be specifically defined and that the area cannot be expanded and is not transferable to a new owner. The applicant has asked that the City specifically reference the code section that supports the requirement. The code is City code 9-7-08.1(E) and is reflected in bold text in Exhibit C. The residential area is for use as a caretaker capacity and is not permitted as a commercial rental unit operated as a business. It is not to be used a 4th business. No storage of bikes, kayaks, equipment, toys or other personal items is allowed outside the building. The applicant has asked it to be modified slightly to allow for a bike rack in front of the building. No outdoor cooking, bbqs or personal recreational activity is allowed outside the building. The Council go over the conditions set forth in of City code 9-7-08.2- Section 9-5-16 Table 2A allows for residential as part of PUD by CUP only. Council has meet the requirement on holding at least one Public Hearing. The council may grant or deny a CUP by the majority of the members of the Council present at the meeting where the application

in considered. Whether the council grants or denies the application they must specify in their findings the ordinances and standards used in evaluating the finding, the reasons of the approval or denial and the actions, if any, the applicant could take to obtain a permit. The Council discusses City code 9-7-08.5(A-I) and agrees that personal items should not be stored outside the business, but overall there are no concerns from the Council. Staff has found that residential uses may be allowed within a commercial zone by CUP when the presence of housing will not compromise present or future commercial uses or when housing environment within the commercial zone will not be unsuitable for residential occupancy by virtue of congestion, environmental factors or activity levels. There are no concerns from the Council due to the conditions recommended by staff and that the residence is limited to the basement of the building.

Councilwoman Cooper **moved** to approve the CUP pursuant to City code 9-7-08.5 and Idaho Code Title 67 Chapter 65 with the following conditions contained in Exhibit B of the Staff Report: 1) If the City Council approves the application there shall be a written development agreement between Bellebriand and the City per section 9-16-07m, prior to building permit submittal. 2) The residential use area of the structure, if granted, should be specifically defined. The area of use cannot be expanded is not transferable to a new owner pursuant to City code 9-7-08.1 no CUP shall be transferable to another, if the property changes hands and the new owner desires to continue the CUP, they shall appear before the City Council for review. Said continuance shall be subject to the same terms and conditions as the original permit. 3) The residential area is for use in a caretaker capacity. The space is not permitted as a commercial rental unit operated as a business in the building. 4) No storage of bikes, kayaks, equipment, toys or other personal items is allowed outside the building, with the exception on a bike rack. 5) No outdoor cooking, bbqs, or personal recreational activity is allowed outside the building for the following reasons: the conditions support minimizing the impacts on the other developments in the area, and brings the proposed CUP in compliance with the Comprehensive Plan of the City of Horseshoe Bend. The conditions should be incorporated into the development agreement prepared by staff and applicant for final approval. Councilwoman Green **seconded**. **Roll call: Councilman Riley- aye, Councilwoman Cooper- aye, Councilwoman Green- aye. Motion carried.**

New Business:

Beverly Nicholl- waive late fee-

Mrs. Nicholl submitted a letter asking to have her late fee waived. She recently applied for a water account and was not aware that there would be a \$10.00 penalty for not paying her bill by the 26th of the month. She requested that there be something added to the account form informing about the late fee. Councilwoman Green **moved** to waive the late fee. Councilman Riley **seconded**. All ayes. **Motion carried.**

Old Business:

Littlecook Property-

There have been some improvements made.

Department Updates:

EMS Department-

The EMS meeting was held last night for the second time with the Council. The Council schedule a third meeting for April 19th.

Discussion was made that the extra \$100 a month stipend request that was made by former Co-Director Sandy Fenton and EMS Melissa Seibel would be in violation of the Idaho Fair Labor Act. It was discussed to increase the current stipend from \$20.00 to \$25.00 a run. Councilwoman Green **moved** to increase the EMS stipend from \$20.00 to \$25.00 a run. Councilwoman Cooper **seconded**. All ayes. **Motion carried**.

Phil Tschida, Public Works-

The ozone monitoring wells have been put in.

Phil handed in his retirement notice effective July 1, 2016. Mayor Hanson read it to the Council. Eric McKee is feeding 2 goats on his property during the day. Councilwoman Green has received a verbal complaint from their neighbor.

The SCADA system needs to be replaced. Amy Woodruff, City Engineer, praised Phil on his ability to keep the current system operating but stressed that the problem has grown to a point where the whole system needs to be replaced. The cost is estimated around \$10,000.00 for a new PLC.

Phil spoke with Chuck Morgan with the Boise County Road Dept. about chip sealing City streets. Mayor Hanson wrote a letter to the County Commissioners and to Bill Jones with the Road Dept. but the City has not received any correspondence. Mr. Morgan had expressed to Phil that the County does not favor repairing City streets because of they are difficult to maneuver with the equipment. It is very important that the streets be addressed this year or they will start to fall beyond repair.

Amy Woodruff, City Engineer-

Last year the City received LHTAC grant funding to rehab School Rd. The City worked on an easement with the school but ran into issues with ownership. Because of the issues Amy proposed that the City look at putting the funds towards Madison Ave which needs repaired and will tie in nicely when ITD replaces the river bridge. LHTAC will require a letter to adjust the funds to another project.

Councilwoman Green **moved** to authorize the Mayor to write a letter to LHTAC to change the grant from School Rd. to Madison Ave. Councilman Riley **seconded**. All ayes. **Motion carried**.

Tony Pantera, City Attorney-

Tony spoke with the gentleman who can update the City ordinances and he would like to meet with the Council.

Mayor Hanson-

The City had a meeting with ITD on the bridge project. It is proposed to be completed in the summer of 2017.

Lynn Maxwell wrote a nice article for the Idaho World on the ground that the City purchased.

Public Comment:

Michael Thurman, 101 Locust-

Michael has been invited to Australia to play basketball. He needs to raise \$5,000 and is looking for sponsors and donations.

Tracy Wright, City Clerk-

Clerk Wright received a petition from Sandy Fenton to recall the Mayor. The petition did not meet the requirements for State Code 34-1713(1) and was denied.

Executive Session:

10:33 pm- Councilwoman Cooper **moved** to entered into executive session IC 74-206 (1B)- personnel matter and IC 74-206(F)- pending litigation. Councilman Riley **seconded**. **Roll call: Councilman Riley- aye, Councilwoman Cooper- aye, Councilwoman Green- aye. Motion carried.**

11:09 pm exited out of executive session.

Meeting Adjourned at 11:10 pm.

ATTEST:

City Clerk

Mayor