

**CITY OF SCAPPOOSE
CITY COUNCIL MEETING
FEBRUARY 20, 2007
AT 7:00 P.M.
SCAPPOOSE, OREGON**

Flag Salute

Call to Order

Mayor Scott Burge called the meeting to order at 7:00 p.m.

Roll Call

The meeting of the City of Scappoose was held at 7:00 p.m. in the Council Chambers; 33568 East Columbia Avenue; Scappoose, Oregon with the following present:

City Council Members:

Scott Burge	Mayor
Judie Ingham	Council President
Donna Gedlich	Councilor
Lisa Smith	Councilor
Jeff Bernhard	Councilor
Larry Meres	Councilor

Staff:

Jon Hanken	City Manager
Doug Greisen	Police Chief
Susan Pentecost	City Recorder
Brian Varricchione	City Planner

Jeff Bennett Legal Counsel

Press:

Darryl Swan Spotlight

Excused: Councilor Chuck Judd

Approval of Agenda

Mayor Burge explained 8.5 Release of Drainage & Utility Easements at Scappoose Heights No. 2 Subdivision will be postponed until March 5, 2007.

Council President Ingham moved, and Councilor Smith seconded the motion to approve the agenda as amended. Motion passed (6-0). Mayor Burge, aye; Council President Ingham, aye; Councilor Gedlich, aye; Councilor Smith, aye; Councilor Bernhard; aye and Councilor Meres; aye.

Public Comments

None

Consent Agenda

Councilor Smith moved and Council President Ingham seconded the motion to approve the minutes from the February 5, 2007 Council meeting.

Councilor Smith stated she submitted comments to City Recorder Pentecost.

Motion passed (6-0). Mayor Burge, aye; Council President Ingham, aye; Councilor Gedlich, aye; Councilor Smith, aye; Councilor Bernhard; aye and Councilor Meres; aye.

Old Business

Ordinance for a Request by Masonry Builders, Inc. to annex 1 acre on East Columbia Avenue

Mayor Burge read the opening statement and guidelines for the hearing. There were no objections to the City Council hearing this matter. No Councilors had anything to declare.

Mayor Burge opened the public hearing at 7:03 p.m.

City Planner Brian Varricchione explained this is the second reading of the ordinance. He explained at the last hearing Council voted to approve the annexation and had the first reading of the ordinance. He stated staff has no additional information to add.

Mayor Burge asked if there were any proponents or opponents and there were none so he closed the public hearing at 7:06 p.m.

Mayor Burge read the title for the second time.

Motion passed (6-0). Mayor Burge, aye; Council President Ingham, aye; Councilor Gedlich, aye; Councilor Smith, aye; Councilor Bernhard; aye and Councilor Meres; aye.

Ordinance for a Request by Richard & Joyce Jones to annex 4.27 acres on Scappoose-Vernonia Hwy

Mayor Burge read the opening statement and guidelines for the hearing. There were no objections to the City Council hearing this matter. No Councilors had anything to declare.

Mayor Burge opened the public hearing at 7:07 p.m.

City Planner Brian Varricchione explained this is the second reading of the ordinance. He explained at the last hearing Council voted to approve the annexation and had the first reading of the ordinance. He stated staff has no additional information to add.

Mayor Burge asked if there were any proponents or opponents and there were none so he closed the public hearing at 7:08 p.m.

Mayor Burge read the title for the second time.

Motion passed (6-0). Mayor Burge, aye; Council President Ingham, aye; Councilor Gedlich, aye; Councilor Smith, aye; Councilor Bernhard; aye and Councilor Meres; aye.

Ordinance for a Request by KS Development to annex 2.2 acres on Bird Road

Mayor Burge read the opening statement and guidelines for the hearing. There were no objections to the City Council hearing this matter. No Councilors had anything to declare.

Mayor Burge opened the public hearing at 7:08 p.m.

City Planner Brian Varricchione explained based on direction provided by City Council at the last hearing the staff report has been amended to reflect that the City Council has not approved the circulation plan that was submitted by the applicant. He stated Council did vote to approve the application at the last hearing.

Mayor Burge asked if there were any proponents or opponents and there were none so he closed the public hearing at 7:09 p.m.

Mayor Burge read the title for the second time.

Motion passed (6-0). Mayor Burge, aye; Council President Ingham, aye; Councilor Gedlich, aye; Councilor Smith, aye; Councilor Bernhard; aye and Councilor Meres; aye.

Ordinance for a Request by Crystal Ridge Construction to annex 1.77 acres on S.E. Elm Street

Mayor Burge read the opening statement and guidelines for the hearing. There were no objections to the City Council hearing this matter. No Councilors had anything to declare.

Mayor Burge opened the public hearing at 7:09 p.m.

City Planner Brian Varricchione explained City Council did vote to approve this application however the findings were amended based on direction provided to staff at the last meeting for the City to use some of the ODOT funds from the annual allocation to improve Elm Street.

Mayor Burge asked if there were any proponents or opponents and there were none so he closed the public hearing at 7:10 p.m.

Mayor Burge read the title for the second time.

Motion passed (6-0). Mayor Burge, aye; Council President Ingham, aye; Councilor Gedlich, aye; Councilor Smith, aye; Councilor Bernhard; aye and Councilor Meres; aye.

New Business

Special Event application from Glen Anderson of Varsity Grill and Bar for March 16 & 17, 2007

Chief Greisen went over the staff report.

Council President Ingham moved and Councilor Bernhard seconded the motion that City Council approve the special event requested by Varsity Grill and Bar for March 16 and 17, 2007 provided all requirements are met.

Councilor Smith asked staff to confirm that the event is in the back parking lot. Chief Greisen replied yes, that is correct.

Motion passed (6-0). Mayor Burge, aye; Council President Ingham, aye; Councilor Gedlich, aye; Councilor Smith, aye; Councilor Bernhard; aye and Councilor Meres; aye.

Special Event application from Glen Anderson for May 4, 2007

Chief Greisen went over the staff report.

Councilor Smith moved and Councilor Bernhard seconded the motion that City Council approve the special event for May 4, 2007, subject to safe completion of the March 16-17 event. Motion passed (6-0). Mayor Burge, aye; Council President Ingham, aye; Councilor Gedlich, aye; Councilor Smith, aye; Councilor Bernhard; aye and Councilor Meres; aye.

Intergovernmental Agreement with Columbia County for UASI and Homeland Security

Chief Greisen went over the staff report.

Council President Ingham moved and Councilor Bernhard seconded the motion that Council approve the Intergovernmental Agreement's for Homeland Security Emergency Management Commission (HSEMC) and Urban Area Security Initiative (UASI) amendment with Columbia County as presented.

Councilor Smith asked Chief Greisen "For the average Scappoose tax payer, what does this mean, what do they get?" Chief Greisen replied very good question Councilor, what that does is help the Police Department with their required reporting that Homeland Security is requiring. He explained this also helps the Police Department to have someone maintain the grants. The grants are required to be reported on a quarterly and yearly basis, He explained even when the grant is expired, it still has to be reported on for three more years. This should help reduce the police department workloads by having the County help manage this whole system.

Motion passed (6-0). Mayor Burge, aye; Council President Ingham, aye; Councilor Gedlich, aye; Councilor Smith, aye; Councilor Bernhard; aye and Councilor Meres; aye.

Intergovernmental Agreement with the City of St. Helens Police Department

Chief Greisen went over the staff report.

Council President Ingham moved and Councilor Smith seconded the motion that Council approve the Intergovernmental Agreement for the Critical Incident Response Term (CIRT) with the City of St. Helens as presented.

Councilor Smith explained she is going to support adoption of the Intergovernmental Agreement with the hope that we will never have to utilize it within the City limits of Scappoose.

Motion passed (6-0). Mayor Burge, aye; Council President Ingham, aye; Councilor Gedlich, aye; Councilor Smith, aye; Councilor Bernhard; aye and Councilor Meres; aye.

Appeal

Appeal of Planning Commission approval of Site Development Review SDR 4-06 (Scappoose Cinema)

Mayor Burge read the opening statement and guidelines for the hearing. There were no objections to the City Council hearing this matter. Council President Ingham stated she needs to declare ex parte contacts

that she had prior to the Planning Commission hearing. She explained in November 2006 she had dinner at Ixtapa and asked the Manager/Owner Mr. Soltero how he felt about the new movie theater and the possible parking issues. She explained Mr. Soltero responded to her question and at that time the conversation ended. She explained on January 11, 2007 prior to the Planning Commission meeting she called Bill Blocksom and talked to him briefly regarding her concern that the Scappoose Municipal Code regarding parking for the theater possibly had not been met. She stated having said that this is a policy interpretation of the parking and she believes she can make a totally unbiased decision. Mayor Burge explained he has had people ask him about this and he explained what the process is and it will not affect his decision in this matter. No other Councilors had anything to declare.

Mayor Burge opened the hearing at 7:28 p.m.

City Planner Brian Varricchione went over the staff report. He explained there are a number of items in the record and they are listed on page one of the staff report. He explained the Planning Commission approved this application for Site Development Review SDR4-06 on January 11, 2007. He explained the applicant's request is for a movie theater that would have a size of 17,650 square feet, along with 8 screens and the applicant proposed 103 parking spaces. He explained the Planning Commission relied on some evidence provided by the applicant and approved the application even though it did not meet the strict interpretation of the parking standards for the City of Scappoose. He explained the Planning Commission relied on some language in the Scappoose Municipal Code specifically section 17.164.150 (b). He explained subsequent to that time the City Attorney has concluded that the Planning Commission had exceeded its authority in relying on that section. He explained there is a procedural error for the City Council to address this evening. He explained staff had initially used the category for "Amusement Enterprises" for the parking standard and computed that the need would have been 200 spaces. He explained the City Attorney has reviewed the language of that particular item and concluded that in fact the requirement should be 259 spaces for that category. He explained at the January 26, 2007 Council meeting on whether to appeal this issue or not, there was a question raised as to whether this would classify as "Spectator Sports and Entertainment". He explained if that were the case the parking ratio would change and the number of required spaces would drop down to 134 rather than 259. He explained the applicant's proposal was to rely on available parking at nearby businesses. He explained those nearby businesses have 19 surplus spaces that could be used and the applicant also proposed to share some additional parking. He explained however the City Code specifies that you cannot count the shared spaces if there is more than two hours overlap for the businesses. He explained on page four of the staff report there is a number of options listed for City Council's consideration. He explained staff is not making a recommendation. Staff is seeking City Council's guidance and direction.

Rick Tiland, 3611 SW Hood, Suite 200, Portland, Oregon, stated parking is the main issue. Also the language of the code and how it deals with parking is an issue.

Mike Sheehan, Attorney, is working with Mr. Nakvasil. He explained his job is to go through where the code is and then give Council a little bit of their position of how the project does meet the requirements of the code. He handed out "Sheehan's presentation outline" and went over it with Council.

The hand out explains:

"A movie house is a nice project and good for the community. Gives families an activity and young people a reasonable recreational outlet so they're less likely to be getting into mischief.

The Applicant has gone through the entire process in good faith and at substantial expense.

The Planning Commission has approved the application.

One Year Rule: if the Council rejects the application then the applicant has to wait a year pursuant to 17.164.200 on resubmittal.

Rejection of Polling: The staff has indicated that the Council would not give the applicant the opportunity to know whether to withdraw the application if the Council were tending toward rejecting the application.

Variance: A request for a variance would be problematic since 17.134.030 (B) requires that there be “exceptional or extraordinary circumstances that apply to the property *** which conditions are a result of the lot size, shape or typography or other circumstances over which the applicant has no control,” and 17.134.030 (E) “The hardship is not self-imposed.”

Withdraw the Application?: So if the applicant doesn’t want to run the risk of having to wait a year to refile an amended application then the Applicant has to withdraw the application and start over, which also entails a substantial delay and new costs. The alternative is LUBA...highly expensive and time consuming for both the City and the applicant.

And so...if we all agree that a movie theater would be a nice thing for our community then the question is whether such a project-given the latitude the Council has in interpreting the Development Code-reasonably meets the requirements of the Code.”

Mr. Sheehan explained his job is to walk through the requirements of the code and to point out if you do a reasonable interpretation of the code sections it does meet the requirements of the code.

REVIEW OF THE PARKING STANDARDS AS APPLICABLE HERE (Page 2 of the handout)

He explained the question is whether or not we are dealing with the use of “Amusement Enterprises” or whether we are dealing with the use called “Spectators Sports and Entertainment”. He explained the staff concluded based explicitly on the opinion of the City Attorney as you see in the staff report that it is “Amusement Enterprises”. He explained when he spoke with Andy Jordan he said it was Amusement Enterprises, not Spectators Sports.

Parking Standards are found in 17.106.

17.106.030(C)(3) Amusement Enterprises

17.106.030(C)(22) Spectator Sports and Entertainment

The staff, based explicitly on the opinion of the City Attorney (Staff report p.2, TOC1105), has “selected” “Amusement Enterprises” as the appropriate category.

Mr. Sheehan explained when he originally worked through it he thought we have in this project 17,650 square feet, we have 10 employees and 800 seats more or less. He explained if you take 17,650 square feet and divide that by the 300 square feet of gross floor area that is 59 spaces. Then he explained 10 employees at 1 space for every two employees is 5 parking spaces for a total requirement of 64 parking spaces. He stated then there is the word “or”. He then explained the “or” section is 17, 650 square feet divided by 300, that would be 59, plus one space for every four seats which would mean 200 spaces, with a total of 259

parking spaces required. He stated so you have a choice of 64 parking spaces or 259. He explained he has provided a copy of the Wal-Mart Store case. He explained the “or” is the applicants choice, that is their position and they elect the 64, but they are not saying they are only going to put in 64 spaces, they are going to put in 103 parking spaces. He explained in addition they have the parking study that says not only does the code require only 64, a fair and reasonable reading of the code would allow 64. He stated the question that brought the appeal in is that there was a clear violation of the code someplace. He stated what he is pointing out is that the code could clearly be read to say 64, so there is not a clear violation of the code. He stated we have the studies that show 103 would work fine.

Mr. Sheehan went over (e) on page 3 of his hand out. It states: The staff’s response is to say that the 259 spaces are required based on another code provision: 17.106.020(J):

“When a building or use is planned or constructed in such a manner that a choice of parking requirements could be made, the use which requires the greater number of parking spaces shall govern.”

His response is “However, in reading 020(J) closely note that the language relates to situations where there is a choice of “use.” “The use which requires the greater number of parking spaces shall govern.” But, we would argue, that on that issue of “use” it was the appropriate “Use” and so that issue is no longer in play and so 020(J) doesn’t come into play.

Mr. Sheehan explained in conclusion the Council has the power to interpret its own ordinances. In this case the outcome depends on the Council’s choice of how to interpret the provisions of the Code at issue here. The handout states in summary, the Council has a reasonable way to interpret the relevant provisions of the Code such that the project is in full compliance. If the Council thinks that the movies are a good fit for our town this is a clear and good way to approve the project.

Rick Tiland stated he is not here to build a theater that doesn’t work in this community. He explained Mr. Nakvasil is very active in this community and he cares a lot about it. Mr. Tiland explained he has built probably 20 theaters in towns of this size. He stated this is the appropriate numbers of parking spaces. He explained Mr. Nakvasil wouldn’t be building this theater with the number of stalls if he felt it wasn’t going to work. He explained for example there was a theater that they did in Astoria that has a parking ratio of 956 and 118 parking stalls and it has never had a problem. He explained the aquatic center is right by there and also the football field but there has never been a problem with parking. He explained the proposed theater is a repeat of the theater in Sandy, Oregon and Battleground, Washington and they have never had a parking problem. He explained if they have a parking problem, they don’t have a parking problem they have a booming business. He explained they can build that number of parking spaces but what they don’t want to do is put a lot of impervious surface down and have it sit there wasted. He explained he sympathizes with the neighboring business and their concern but the reality is it will only bring business to them.

Councilor Bernhard asked if the 7% ratio had anything to do with the amount of seats that need to be filled which is equal to the amount of parking needed. City Planner Brian Varricchione replied he doesn’t remember the number 7% but he does remember a discussion at the Planning Commission hearing that something along the lines of if the theater had 11% seat usage that they would be financially be doing very well. He explained he found the evidence of 7% discussion supplied by Dave Saunders in an exhibit to the staff report. Mr. Saunders stated in another 8 plex only 7% of the seats are filled on average. Mr. Tiland stated at the very best summer or Christmas season on a Saturday at 8:00 p.m. the theater might run, he has heard numbers as high as 31% and 32% coverage of the seats. He stated the numbers are valid and the numbers are consistent.

Council President Ingham asked if there were other hours of overlap? City Planner Brian Varricchione replied he did not do an hour-by-hour chart of the overlap. He explained there is an exhibit in the staff report that lists the operating hours of the near by businesses. He examined that list and concluded that there was more than two hours of overlap in each case and he didn't look any further.

Mr. Tiland explained he was suggesting that the City Council might be able to act within their authority in reviewing this particular use as though it was 8 different tenants. He explained if there are only 4 theaters in operation making available 400 seats we won't even have to use the 19 shared parking spaces that are available without even counting the 100 parking spaces that are available at the Fred Meyer site. He explained they have been required to put in a pedestrian walkway linking over to Fred Meyer, even though the Fred Meyer parking is beyond the 400 feet that is allowed by code. He explained the reality of the situation is that when you have a date night and you drop your date off at the theater and you go looking for a parking space you might have to go to Fred Meyer. He explained in other jurisdictions they have looked at up to 1,200 feet away with the recognition that it is a destination spot and it is for a longer duration.

Councilor Meres asked where are the extra 19 spaces? City Planner Brian Varricchione explained the spaces are located south of Havlik Drive. He also explained that Fred Meyer has over 100 spaces more than the City code requires. Councilor Smith went over where the spaces are and stated they are in the staff report on page 9.

Geoff Judd, transportation engineer, explained he has been going by the code requirements and the Parking Generation Manual and no more than 300 spaces are used at a given time.

Len Waggoner explained on November 21, 2006 City Council passed a System Development Charge discount/reduction that amounted to 60% of the current SDC. He stated that means that Council acknowledged simply that there was going to be less traffic, less transportation issues, less transportation problems by your own admission. He explained Council used a format which City Manager Hanken attached to the dialog. It was passed unanimously. He explained it reduced the System Development Charge from \$170,000 to \$67,000. He explained it reduced the trip count from 1,617 to 638. He explained that Council has already made a significant adjustment in the analysis of the transportation issues pertaining to this property. He explained in 1995 Fred Meyer came to Scappoose and Weston purchased the adjacent property. He explained at that time Fred Meyer and Mr. Weston signed their mutual parking agreements. He explained in 1996 Mr. Weston had his master plan approved and the master plan showed everything south of Havlik Drive excluding the parcels that were the Thurston piece. He explained then McDonald's came in and had their approval done in the City of Scappoose. He explained the most interesting thing about all of these particular events is that they occurred before Council enacted a cross parking rule. He explained Mr. Weston received approval for the construction of the Columbia Weston building and now in this particular approval there was no requirement for the two-hour cross parking and it also referred to the Weston Master Plan. He explained the conclusion is there is nothing in the City's endorsements of all the planning codes/planning specifics that have anything south of Havlik relevant to the two-hour cross over parking, there is no requirement. He explained today if you are putting a two-hour parking restriction on Mr. Nakvasil what you are basically saying is Mr. Nakvasil will be patrolling his own lot and after people have been in his lot for two-hours tow them away. He explained he feels that would be a hard decision for Mr. Nakvasil to make, it just doesn't sound very logical. He stated the reality of it is Mr. Nakvasil's customers can park in front of Ixtapa, Ixtapa's customers can park in Mr. Nakvasil's lot, Nancy Monroe's customers can park in other lots and on and on. He stated remember everything but McDonald's, Nancy Monroe's property, Columbia River PUD and the proposed Nakvasil subdivision are all owned by Mr. Weston. He explained so Mr. Weston's agreement for the balance of that property according to your two hour cross over code takes precedent, it is the ownership, it is not a questions of users in this process.

Councilor Smith asked City Attorney Bennett with regards to the issue of the memorandum that is referenced in the staff report January 30 from the City Attorney's office, it is not showing as being in the record. She stated she understands that Council has to act to place that in the record because it is addressed to the Scappoose City Council and in doing so it becomes a matter of public record. She feels if it is going to be in the record it needs to be placed in there.

Councilor Smith moved and Councilor Bernhard seconded the motion to place the memorandum from City Attorney's office dated January 30, 2007, the Theater Case Appeal File number 426933775 into the record. Motion passed (6-0). Mayor Burge, aye; Council President Ingham, aye; Councilor Gedlich, aye; Councilor Smith, aye; Councilor Bernhard; aye and Councilor Meres; aye.

Councilor Smith talked about the use that the theaters come under. She explained it is specific in the code as commercial amusement facility. She stated when you move to parking you no longer see the phrase "commercial amusement facility." She explained, under uses, commercial amusement facility has some language after it such as movie theaters, bowling alleys, video arcades. There is a wide range of things. She explained when you move to parking requirements there is one called "amusement enterprise" and there is one called completely called "spectators sports and entertainment." She stated there are different types of commercial amusement facilities and the code recognizes that through multiple types of parking requirements. She explained one requirement is one space per four seats and one simply states one space per six seats, which in the case of this particular project is 134 seats. She stated it is not 64 seats and she doesn't agree with that reading and the City Attorney has stated 259. She wanted to state this before the record closed in case that resulted in Council members wanting to ask additional questions to the applicant. She stated the traffic impact on the streets doesn't really have anything to do with the requirements for stationary parking. She explained on the issue of property owners writing shared cross over agreements, it is accurate that they can do that but they also have to satisfy the City's requirements to be counted for required parking. She explained the existence of an agreement between various property owners doesn't override the City's requirement.

Mr. Tiland asked if something was brought into the public record, such as the attorney's memo, do they have the right now to review it since it has been kept from them despite their request prior to this time? Mayor Burge replied yes.

Mayor Burge recessed for a break at 8:26 p.m. and reconvened at 8:34 p.m.

Mr. Tiland stated this is all too legal for him. He has no comment.

Councilor Bernhard asked at the theaters busiest time, approximately how many parking spots would be needed? Mr. Tiland replied anywhere from 100 to 120.

Council President Ingham went over the staff report page 3 of 4; "Please note that the applicant has requested that the Council poll its members prior to closure of public testimony to provide an opportunity to amend the application if necessary." She stated she didn't know if that is important to do. She thinks Council needs to read that and consider that. She stated one of Mr. Sheehan's points in his presentation was of the one-year rule. She stated this solves the one-year rule problem correct? She is asking what the procedure is now before the public hearing gets closed.

Legal Counsel Bennett explained there is no provision in the code that would allow an applicant to ask the Council if they are going to approve or deny an application. He said when he represents private developers

if he could poll City Council members before a public hearing is closed he would do it, but you can't. He explained what he suggested to City Planner Brian Varricchione and certainly would suggest to the applicant, the applicant can always try and figure out what Council will do and then pull the application, but Council cannot give them an advance reading of what their opinion will be. He stated there is also a question whether regarding 17.164.200 regarding the one-year application, it doesn't mean the applicant can't apply for a variance, or an amendment to the code it only means they can't apply for development review. He explained in responses to that the applicant could say if we got the variance they would still have to go through development review. He explained his view would be that is a different application. He explained you could interpret 17.164.200 not to apply in that situation.

Rick Tiland stated Councilor Smith had an excellent question and he brought that up also that the code as discussed in the last meeting when the decision was made to appeal is not always black and white, sometimes it is gray. He explained City Planner Brian Varricchione's job is to provide the applicant with the interpretation of the code and help the Planning Commission and guide the City Council and who's viewing the code. He had the same read that there wasn't a strong definition, the terminology amusement in a two word setting verse a three word setting where amusement is the only connecting word shouldn't drive the code beyond the reality of the need for the customers in the community. He explained the customers in the community is evidence in the record show a certain parking level that they are providing is adequate. He explained on the last paragraph of the City Attorney's memo it states the Council can interpret the code and provide for ultimate parking standards. He feels reviewing the evidence in the record and showing the parking demands they can do that.

Mayor Burge closed the hearing at 8:42 p.m.

Councilor Smith moved and Councilor Gedlich seconded the motion that the standard for the theaters parking is Spectator Sports and Entertainment, at one space per six seats and the application is approved subject to provision of the parking that satisfies the standard or reduction in the theater size.

Councilor Bernhard stated he took an oath to uphold the code when he as elected to this position. He stated he also believes there are times for common sense. He feels this is one of those times. He explained he works in the mortgage industry and they have underwriting conditions that they have to fulfill when someone wants to get a new mortgage and there are times that you have to go directly by that rule, but there are times that you have to go around that a little bit when it is a common sense issue. He thinks on this particular one here, when he was asking the question regarding the busiest possible time, 31%, he was trying to figure out how many parking spots is that going to be, the answer turns out to be 100 –120 spots. He stated the applicant is pretty close to that. He explained we all know there is an abundance of parking spaces in Fred Meyer parking lot and at the car wash to cover the busiest possible times. He stated he doesn't feel it is going to be a blockbuster night every night, maybe just a few times a year. He explained we deal with other parking issues a few times a year. He can't see himself denying this application because of not having enough parking spots five to six times a year. He stated even though he raised his hand and said he would protect the code he feels this is a time to stand up and say this doesn't make sense.

Councilor Smith replied her motion was to approve it. Councilor Bernhard replied to approve it and to down size the theater and decrease the amount of seating. Councilor Smith stated her motion is to reduce the required parking from 259 according to the City Attorney, 200 for the City Planner to 134, which is consistent with the city code, by using spectator entertainment. She explained it is not an uncommon thing in this community for the Planning Commission or the City Council to approve an application subject to a condition of approval that allows that applicant to provide some kind of amended site plan before they

build. Councilor Bernhard stated his comments stand. He explained personally he likes what the applicant has asked for and he doesn't agree with that.

Council President Ingham stated she feels the 134 seats, based on the 1 space per 6 is a good compromise. She stated her major concern from the very beginning has been encroaching on other people's parking spaces and upsetting their business flow. She would like to stick to code as much as possible, and she feels this is a great compromise.

Councilor Gedlich would like to concur with Council President Ingham's comments. She is excited about the development. She stated however being an elected official she swore she would abide by the code. She stated Council needs to be consistent.

Councilor Meres stated there are things that are black and white, but you make exceptions once in awhile. He feels as a whole it is going to help the community. He has had some concern about the parking, but with the information before him he doesn't feel there is going to be a problem.

Mayor Burge concurs with Councilor Bernhard. He explained the City Attorney has given Council the ability to interpret the code. He explained based on the evidence that he has read he feels the Planning Commission did their job. He explained if Council interprets it the way the Planning Commission did they can move forward and accept this and then he would make recommendation to move forward and clarify the sections recommended by the City Attorney.

Motion passed (4-2). Council President Ingham, aye; Councilor Gedlich, aye; Councilor Smith, aye; Councilor Meres, aye, Mayor Burge, Nay; and Councilor Bernhard, Nay.

Councilor Smith moved and Councilor Gedlich seconded the motion that Council direct staff to send out the notice of decision immediately.

City Planner Brian Varricchione replied the written findings would need to be amended. He explained with Council's permission he could make those amendments and send them out. He explained his original proposal had been to bring them back to Council for review prior to adoption. Councilor Smith replied "please don't."

Motion passed (6-0). Mayor Burge, aye; Council President Ingham, aye; Councilor Gedlich, aye; Councilor Smith, aye; Councilor Bernhard, aye and Councilor Meres, aye.

Announcements

City Manager

City Manager Hanken explained the next City Council meeting is scheduled for February 27, 2007 in Clatskanie. He stated he believes the City of Scappoose will be hosting the next one in May. He will confirm that. He explained he sent out an email regarding Governing 101, a session the League of Oregon Cities will be putting on. He explained in March there will be collective bargaining with the AFMSCE Union. He explained he will be reporting for jury duty in March.

Police Chief

Chief Greisen explained since the stop signs have been installed, on Columbia Avenue by 4th and West Lane, they have had several positive comments.

Councilors

Councilor Meres feels it is a good placement of the stop signs and he has heard other people say the same.

Councilor Bernhard asked about CCTV. City Manager Hanken explained CCTV has been off the air for a few months. He explained they are working on relocating. Councilor Bernhard asked about the neighborhood watch. Police Chief Greisen explained is a great concept; it is hard to get neighborhoods involved. He explained the Police Department started a business watch.

Council President Ingham stated this was a good meeting. She stated she likes the location of the stop signs and hopes that everyone gets use to them. She discussed the neighborhood watch and new housing developments. She also stated Council needs to look at the code and update it.

Mayor Burge stated he needs a motion to continue the meeting.

Council President Ingham moved and Councilor Bernhard seconded the motion to continue the meeting past 9:00 p.m. Motion passed (6-0). Mayor Burge, aye; Council President Ingham, aye; Councilor Gedlich, aye; Councilor Smith, aye; Councilor Bernhard, aye and Councilor Meres, aye.

Councilor Gedlich concurs with Council President Ingham that Council needs to review some of the code.

Councilor Smith explained there is a group that is forming that is going to be working on literacy in Scappoose. She stated in the Metropolitan Briefing Book, there is a section related to test results to see how kids are doing. If any of the Council Members want to help, please let her know.

Mayor Burge congratulated the Scappoose High School wrestling team for winning 3rd at State.

Adjournment

Mayor Burge adjourned the meeting at 9:09 p.m.

City of Scappoose, Oregon

Scott Burge, Mayor

Attest: _____
Susan M Pentecost, City Recorder