

**CITY OF SCAPPOOSE  
SPECIAL CITY COUNCIL MEETING  
JANUARY 26, 2007  
AT 6:00 P.M.  
SCAPPOOSE, OREGON**

**Flag Salute**

**Call to Order**

Mayor Scott Burge called the special meeting to order at 6:00 p.m.

**Roll Call**

The meeting of the City of Scappoose was held at 6:00 p.m. in the Council Chambers; 33568 East Columbia Avenue; Scappoose, Oregon with the following present:

**City Council Members:**

<b>Scott Burge</b>	Mayor
<b>Judie Ingham</b>	Council President
<b>Donna Gedlich</b>	Councilor
<b>Lisa Smith</b>	Councilor
<b>Jeff Bernhard</b>	Councilor
<b>Charles Judd</b>	Councilor
<b>Larry Meres</b>	Councilor

**Staff:**

<b>Jon Hanken</b>	City Manager
<b>Brian Varricchione</b>	City Planner
<b>Susan Pentecost</b>	City Recorder

**Press:**

<b>Art &amp; Sally Heerwagen</b>	<b>Spotlight</b>
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**Excused:** Andy Jordan, Legal Counsel

**Consider whether to appeal Planning Commission decision on SDR4-06 (Scappoose Cinema)**

City Manager Hanken explained staff has had a request from Councilor Ingham. He explained he will let Councilor Ingham express her concerns a little bit to Council related to why she would like to have the City Council call this up on their own.

Councilor Ingham stated basically her concern from the beginning and especially after she heard the results of the Planning Commission decision was the parking issue and the availability of parking spaces.

Councilor Gedlich stated point of order, maybe what needs to be done first since a lot of the Councilors don't know what is happening maybe City Manager Hanken or City Planner Brian Varricchione could update or a summary of what has happened so everyone is on the same page. Councilor Ingham agreed that is a good idea.

City Planner Brian Varricchione gave an overview of what has taken place. He explained the request is for a site development review application for a movie theater, which would have 8 screens. He explained the applicant proposed 103 parking spaces. He explained the Planning Commission held a hearing for this on January 11 and at that time they did vote to approve the application and the number of parking spaces. He explained there was considerable discussion at that time as to whether to rely on some evidence that was

provided by the applicant in support of the number of parking spaces that was proposed. He explained the calculations that staff proposed and that the Planning Commission adopted demonstrated that under a strict interpretation of the code the site would be short of the required number of parking spaces. He explained the applicant proposed to share parking amongst neighboring businesses with whom they have legal recorded agreements to share those parking spaces. He explained the City Code specifies that shared parking can only be counted to the extent that the hours of operation of the businesses do not overlap by more than two hours. He stated, as alternative evidence, the applicant provided some computations that were proposed by a transportation engineer based on some methodology published by the Institute for Transportation Engineers. He stated essentially what they did they looked at the hour by hour demand for parking for the mix of uses that would be using the shared parking and that calculation demonstrated that at no time would the demand exceed the supply of parking spaces. He stated, based on that evidence, the Planning Commission ruled to approve the application.

Councilor Ingham stated her main concern with the parking issue was she questioned the decision based on the fact that the theater had to go to neighboring businesses and share their parking spots meet code requirements. She explained she called Councilor Smith, she talked to City Manager Hanken at length and she talked to City Planner Brian Varricchione at length about the whole issue. She explained she needed to get some other Councilors input and she spoke with Mayor Burge. She asked Councilor Smith, because of her planning background, to look at the issue. She explained she looked carefully at the issue.

Councilor Smith asked City Planner Brian Varricchione what does the Scappoose Development Code require for parking for this use? City Planner Brian Varricchione replied the calculation that was used by staff and adopted by Planning Commission used the category of Commercial/Amusement enterprises, which requires one space for four seats. He explained the applicant proposed 800 seats therefore staff computed the need of 200 parking spaces. Councilor Smith stated so there is a specific requirement in the Scappoose Code for a specific number of parking spaces. City Planner Brian Varricchione replied correct. Councilor Smith asked what does the code require for shared parking? She asked is there a specific criteria for shared parking? City Planner Brian Varricchione replied for shared parking: Section 17.106.020 (F) Within the commercial and expanded commercial zones, owners of two or more uses, structures or parcels of land may agree to utilize jointly the same parking and loading spaces when the hours of operation do not overlap by more than two hours; satisfactory legal evidence shall be presented to the planner in the form of deeds, leases or contracts to establish the joint use; and if a joint use arrangement is subsequently terminated, the requirements of this title thereafter apply to each separately. He stated in conjunction with that subsection H same section which regards: Location of Required Parking; Off-street parking spaces for single-family, duplex dwellings and single-family attached dwellings shall be located on the same lot with the dwelling and off-street parking spaces for uses other than single-family or duplex residential shall be located not further than four hundred feet from the building or use they are required to serve, measured in a straight line. Councilor Smith stated so there is a specific number called for in the code, there is a specific requirement related to the two-hour overlap. City Planner Brian Varricchione replied correct. Councilor Smith stated for the record she thinks one of the things our community has said to us that they wanted is a movie theater. She explained when Councilor Ingham called her she had not tracked this application through the process, she had no concerns over a movie theater coming to Scappoose, and she thinks it is a positive thing. She stated she also took an oath as a City Council member to support the Development Code. She stated the Development Code has two very specific requirements related to parking. She stated the Development Code also has a very specific process in her understanding for varying from those requirements, applying for a variance. She stated we are familiar with that language, we have heard that language. She stated in this case that is not what has occurred, no application for a variance from the standards has been applied for. Her question that she raises with regards to this issue, does the City of Scappoose have the ability to grant, for lack of a better word variances, from the code in the Limited Land Use process? She asked is this a variance and if it is a variance why didn't we follow the established variance process? She asked what did we do here? She stated that is the reason she believes there is question to this application. She explained the appeal process is to answer those questions. She stated the

appeal can be withdrawn if Council discovers they already have those answers. She stated we are not doing something negative here by calling up this request. She also had a question for staff regarding the requirement that was made for parking suggesting consideration should have been given to another parking category called spectator's sports and entertainment which requires 1 parking space for 6 seats. She stated that question can't be addressed without the appeal getting filed. City Manager Hanken replied in the code there is no definition for each one of those classifications. Councilor Smith stated based on all of the questions, City Attorney Jordan directed staff to prepare a form, which is a Council request for appeal; it is what is in front of Council.

Councilor Smith and Councilor Judd seconded the motion that City Council appeal the Planning Commissions decision on SDR4-06, Scappoose Cinema.

Councilor Gedlich asked before Council votes on this is there also a possibility of remanding this back to the Planning Commission to have them review and go through the various options that have been discussed before or does Council have to do this first? City Manager Hanken replied his recommendation in terms of what he hears is policy questions that need to be addressed by Council first before they can advise Planning Commission to what the interpretation is. He stated remanding it back would do nothing to help issue the process. He stated Council either needs to call this up on their own cognizance to put that marker on it that says yes we will look at it. He explained Councilor Smith is correct it can be removed a later date should we get communication from Attorney Jordan this is what the law says related to that.

Councilor Smith stated her understanding of the process as a planner, is first the appeal is filed, and then you go through the hearings, you hear from the applicant, you hear from attorneys, then you make the decision on whether to remand to the Planning Commission, that is the point that the decision is made. She stated the only thing we have on our agenda this evening, the only thing that can occur at this point in time is yes we are going to put in the appeal request or no we are not going to put in the appeal request.

Councilor Bernhard stated from what he understands it sounds like we don't have much of a choice on this particular matter when it comes to going against the actually code, what it says at this time. He wants to make sure he is clear on this; it almost seems like a black and white issue. He stated by all means he is not an expert in this field. City Manager Hanken replied with all due respect he will disagree that it is black and white. He explained part of the process that the Planning Commission goes through even in a limited land use is a written factual statement and again from his understanding of what the Planning Commission did they looked at that information and thought it was within their purview under the decision process and made the decision. He stated that is another question that needs to be answered. Councilor Bernhard replied this body as much as they do have some expertise on this body they don't see this every week or on a bimonthly schedule like the Planning Commission does. He stated so the Planning Commission who sees this much more often than the Council does made a decision and a ruling based off of their experience on it and found it fair. He is asking for additional clarification from Council then why are we questioning who we consider to be our experience in this matter. City Manager Hanken replied there is the policy question that was raised here. He stated you can take what is in the code and what Councilor Smith said and go ok is there a potential conflict here. He stated what he is hearing is yes there is. Councilor Smith replied we can't say that until we have gone through the hearing and had the input from the attorneys. She stated in order to get that question answered it doesn't matter this evening what the Planning Commission did, what the applicant did, what anyone did, except our understanding for those who have read the staff report or for those who have looked at the appeal and say this question has been raised. She stated the questions have been raised now in order for Council to get the evidence and the input that we need to make all of these decisions that are being raised as questions Council has to decide if they are going to get those answers or

are we not going to get those answers. She stated that is basically the question that is on the plate. She believes Council should go gets those answers to the good questions that have been raised. She stated other Councilors will have to decide that for themselves. Councilor Bernhard asked the impact that has on the applicant is what, please? City Manager Hanken replied realistically this would be a little bit delayed but from the land use decision process we are still within the 120-day requirement and that is the legal requirement that we would need to follow.

Mayor Burge asked if City Manger Hanken has spoke to City Attorney Jordan? City Manager Hanken replied no he hasn't. Mayor Burge asked if the Council decides to appeal this is there any way to get City Attorney Jordan to look at this soon? City Manager Hanken replied he can certainly try. He stated in the fairness we will go through the process related to the notices for the public hearing. He stated we are working on the 120-day time slot, we still need to follow all the processes and he will do everything he can. He stated there still is a notification process and they will get it expedited as soon as we can get it on. Mayor Burge replied his feeling is if this does pass that if we can have information from City Attorney Jordan that states yes or no about the questions by the next regular, which is a week from Monday, it might help the applicant. He stated if it comes out that the current ruling was done correctly so the applicant can move forward quicker. City Manager Hanken replied he will try to expedite this as soon as possible. He stated the only thing that he is hedging on here in terms of authority to withdraw the appeal, as City Manager, he doesn't have that. He stated so again Council would need to address that in a Council meeting. He stated if you wanted to go forward with the hearing the notification wouldn't be able to necessarily done by the next Council meeting. Mayor Burge is saying that we as a Council could withdraw at the next Council meeting without a public hearing if they get notification from City Attorney Jordan that the Planning Commission did this process correctly.

Councilor Meres asked when the 120 days started? City Planner Brian Varricchione replied it ends on April 13, 2007. Councilor Meres feels Council has a lot of time and that Council really needs to look into this. He stated if Council doesn't have the facts how can we make a decision. He would like to hear more about this. He stated he does think the community wants a theater but he is concerned about the variance of the shortness of the parking spaces.

Councilor Bernhard hopes that the City doesn't spend a lot of time, man-hours and money on this issue if Council eventually gets to the decision that they are going to allow the applicant to go forward and have a variance. He stated that is another one of his concerns, he thinks they are valid questions and they need to be answered, but when at the same time when you look at attorney fees and costs he wonders if Council is going to be back here saying it is ok go ahead and do it after a large cost.

Councilor Ingham stated if we find that a variance process needs to be gone through then the applicant will have to go through that variance process.

Councilor Gedlich stated she thinks what we have to remember is there is going to be black and white and gray areas in the code. She thinks what is most important for development is to make sure we are following our code to the best of our ability, we have sworn to do that to our citizens. She stated however she thinks that is one of the issues that might come up during the goal setting session. She would like to make sure that we do the process correctly and make sure everything we do is fair and equitable not only for the business people in the community but for our citizens.

Councilor Judd stated he agrees with Councilor Gedlich, he believes everybody wants a movie theater. He agrees that we have to make sure everything is done correctly.

Motion passes (7-0). Mayor Burge; aye, Council President Ingham; aye, Councilor Gedlich; aye, Councilor Meres, Councilor Bernhard; aye, Councilor Judd; aye, Councilor Smith; aye.

### **Adjournment**

Mayor Burge adjourned the meeting at 6:28 p.m.

**City of Scappoose, Oregon**

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Scott Burge, Mayor

Attest: \_\_\_\_\_  
Susan M Pentecost, City Recorder