

**CITY OF YACHATS**  
**CITY COUNCIL MEETING**  
**Civic Meeting Room, Yachats Commons**  
**January 13, 2011**  
**Regular Meeting 2:00 P.M.**  
**MINUTES**

The regular meeting of the City Council was called to order by Mayor Ronald Brean at 2:00 p.m. in the Civic Meeting Room at the Yachats Commons. Council members present: Greg Scott, David Rieseck, Sandy Dunn and Burgundy Featherkile. Staff present: Director of Public Works, John McClintock, City Planner, Larry Lewis, and City Recorder, Nancy Batchelder. Audience: 26.

**I. Announcements and Correspondence**

- Movie Night next Thursday.
- On March 1, the music group the Blackberry Bushes will be appearing at the Commons as a fundraiser for the noxious weed removal campaign.
- January 30, 2011 – State of the City event from 2:30 p.m. to 5:30 p.m.

**II. Citizen's Concerns**

Betty Johnson, CERT Coordinator presented information about the free CERT training that is available to help people become ready for disaster response and recovery.

Bob Bennett and Don Niskanen, members of the CERT each spoke on the benefits of CERT, having an emergency plan and being prepared.

Pat Armstrong said that she wanted to thank the Parks and Commons Commission and the Council for their work on the Fragrance Free policy issue.

Armstrong said that she understands how people feel when asked to refrain from wearing perfume. It was not until fragrances started to affect her health that she understood what it is like to have reactions to fragrances and scents. Those reactions affect the respiratory tract, the nervous system and/or the eyes.

Jirivil Wood said that she was living within the city limits when she was appointed to the Parks and Commons Commission; however, she now lives outside the City. Currently there may only be one person on the Commission that lives outside the City Limits, and Don Niskanen is currently the person on the Commission from outside the City Limits. Jirivil said that she believes that Niskanen actually serves the people within the city limits and so there is no representation of those outside the city limits. She said that she would be willing to continue serving if City Council would allow it. She would also be willing to continue serving until the vacancy could be filled.

Brean said that he does not think the City Council is ready to make any decision at this time, but it would be appropriate for Wood to participate without voting.

David Locke said that at the Chamber Board Meeting last night several members voiced concerns that the Food and Beverage Tax is hurting their ability to book groups and they think they are losing business over this.

Locke said that he thinks the Chamber needs to do some research and prepare a report for the next Council meeting.

Keith Perkins said that he believes there is an exemption for meals if they are part of a package deal.

It was noted that this would be something to research for a future meeting.

### **III. Consent Agenda**

#### **A. Minutes of December 6, 2010 Work Session, December 9, 2010 Executive and Regular Meeting.**

#### **B. Bills for Approval**

#### **C. Resolution No. 2010-12-04 – Library Commission Membership**

#### **D. Resolution No. 2011-01-01 – Declaring January Volunteer Recognition Month**

#### **E. Resolution No. 2011-01-02 – Signers on Bank Accounts**

The first payment request on the East Hillside LID contract was added to the bills for approval.

Motion to adopt the consent agenda, Aye – 5, No – 0.

### **IV. Reports**

#### **A. Guests**

##### **1. View the Future**

Andrea Scharf explained how a community forest could be established, paid for with bonds, and then managed.

Tom Tuchmann, president of US Forest Capital is willing to do a feasibility study for a Community Forest in Lincoln County. View the Future is hoping the City will help pay for the study. The study would cost about \$40,000.

#### **B. Commissions**

Marie Green, Chair of the Library Commission reported that the meeting day and time has been changed. The quarterly meetings will be now held on the first Tuesday of the month (January, April, July and October) at 1:00 p.m.

#### **C. City Council**

Scott reported that Quiet Water Homeowners are doing a straw poll vote to see if the members wish to accept the offer from the City. He will be able to report more in February.

Dunn said that it is interesting to note on Visitor's Center report that contacts are down. This seems to correlate with the fact that there is a decrease in Transient Room Tax and Food & Beverage Tax.

**D. Public Works Director- John McClintock reported:**

- There was a program on TV last night called the Deadliest Earthquake. There was a lot of information about earthquakes and Tsunamis and how they will affect the Oregon Coast. Cannon Beach is building a Tsunami shelter that will hold 1,000 people. They say that there is a 1 in three chance that there will be a major earthquake along the Oregon Coast within the next 30 years.
- The contractors are working on the LID project. They are about 16% complete by value of the contract and 24% by time. They should have the work completed by the end of February or first of March.
- There was 5.2" of rain in 22 hours during December. The only problem with the drainage was Gender Creek, which overflowed onto Hwy 101.
- The Public Works crew kept cleaning catch basins and storm drains through out the storm. Three culverts had to be unplugged.
- With the heavy rain, there was an increase in hydraulic load in the collection system.
- Sill operating on one SBR unit. There were no problems handling the load.
- Flow checking of the manholes continued during the event in an effort to isolate the location of infiltration and inflow.
- Both Reedy and Salmon Creeks are full. The headworks at Reedy Creek needed cleaning because of sediment deposited by the heavy flows.
- The Reedy Creek access road was graded and some fallen trees were cleared.
- Design and engineering work should begin in the near future as the City starts to work on completion of the 804 S. Trail and Ocean View Drive. The County has agreed to give the City the money to do the work, but first there has to be a plan. There will be meetings to come up with a plan that is acceptable to the community as well as to Lincoln County.
- Almost ready to sign the annual contract with the USFS – there will be a 5% increase to the contract price. The crew will be training at the new plant at Cape Perpetua. The new plant should mean that it will take less time each day.
- Monitoring on the Yachats River data is being assessed. Based on the monitoring data it appears that the amount of water the City's could draw under the water right would equal about 2% of the total flow.
- OSHA – voluntary inspection. There were some items to address.
- Will be scheduling a meeting soon to discuss the 804 Trail and Ocean View Drive improvements. Then the plan can be presented to the public for input.

**E. Written Reports:**

**Visitors Center, Marketing Director and Code Enforcement Officer**

**V. Public Hearing - Appeal of Conditional Use Application: Buel-McIntire**

1. This hearing is an appeal of a Planning Commission decision to deny the issuance of a Conditional Use Permit to park a recreational vehicle on their property for temporary living purposes as requested by Steven & Crystal Buel-McIntire. Subject property is located at 615 Lemwick Lane, and described on the Lincoln County Assessor's Map as 14-12-22DD, Tax Lot 1100. Case File No. Case File #1-CU-PC-10.

2. The applicable criteria for this appeal are

1 Yachats Municipal Code, Title 9 Zoning and Land Use  
2 Chapter 9.16 Residential Zone R-2  
3 Chapter 9.68.060 Recreational Vehicles  
4 Chapter 9.72 Conditional Uses  
5 Yachats Comprehensive Plan - Goal G. Control of Urban and Form  
6

7 The City Council has received the record of the Planning Commission proceedings, including the  
8 original application, all written testimony received, minutes and audio recording of the Planning  
9 Commission hearing and the Findings and Conclusions adopted by the Planning Commission.  
10 The City Council has also received the appeal application, all written testimony from the  
11 applicant, additional written testimony from property owners in the area and staff reports from  
12 the City Planner.  
13

14 Brean asked if anyone object to the jurisdiction of the Council to hear this matter. There were  
15 none.  
16

17 Brean asked if there are any Councilors wish to make any disclosure, or abstain from  
18 participating or voting on this appeal because: of possible financial gain resulting from this  
19 appeal; you own property within the area entitled to receive notice of this hearing; you have a  
20 direct private interest in the appeal; or because you have determined that you cannot be  
21 impartial. There were none.  
22

23 Brean asked if Councilor needs to declare any contact, written, oral or otherwise, prior to this  
24 hearing, with the appellant, any other party involved in this hearing, or any other source of  
25 information (outside of staff) regarding the subject of this hearing? If so, please state with whom  
26 you had contact and what was said. (If any Councilor declares an ex parte communication state:  
27 "The parties will have the right to rebut the substance of this communication during their  
28 testimony at this hearing.")  
29

30 Scott said that he had had a brief conversation with his wife who is a member of the Planning  
31 Commission. However, he does not believe that it would impair his ability to act without bias on  
32 this issue.  
33

34 Brean asked if any Councilors have visited the site.  
35

36 Brean and Rieseck each stated that they have visited the site.  
37

38 Brean asked staff to give a description of the appeal and a summary of the decision of the  
39 Planning Commission.  
40

41 Lewis described the application and the criteria to be used. (See memos dated January 4, 2011  
42 and January 11, 2011 from the City Planner which serve as the staff report for the appeal  
43 included as part of the record for this case.)  
44

45 Lewis described the various options the City Council has in making the decision on the appeal.  
46 Lewis explained that if the Conditional Use Permit is approved the City Council may wish to  
47 place conditions on that permit. In any case, the Findings and Conclusions should be drafted  
48 very specifically to show how the permit does or does not fit the criteria.

1  
2 Brean asked if any Councilor had any questions of Planner at this time.

3  
4 Rieseck said that he had discussed this with both the City Planner and former Councilor Larry  
5 Nixon to find out why this type of use is listed as a possible conditional use in R-2 and not in the  
6 R-1 zone.

7  
8 Brean asked the appellant to come forward and state why this appeal should be approved.

9  
10 Buel-McIntire said that he knows he submitted a lot of written material but he would like to  
11 address the application and why it should be approved.

12  
13 Buel-McIntire said that the current Code must be consistent with the Yachats Comprehensive  
14 Plan or it would not have been adopted in the first place.

15  
16 Buel-McIntire read from the "Executive Summary" as submitted on January 4, 2011 (attached as  
17 part of the record) and sections of the Yachats Municipal Code.

18  
19 Buel-McIntire said that he and his wife are willing to meet the defined criteria and other  
20 limitations placed on the permit by the City Council.

21  
22 Buel-McIntire said that the Planning Commission said that appeal of the application would open  
23 the City up to this type of use everywhere. This is misplaced because that type of use is not  
24 allowed in all zones.

25  
26 Brean asked if any Councilor had any questions of the appellant.

27  
28 Dunn asked about the access to Coolidge.

29  
30 Buel-McIntire said that they never intended to ask for access from Coolidge. The site plan  
31 submitted may have appeared that way.

32  
33 Brean asked if there any other people in the audience who wish to speak in favor of the appeal.  
34 There were none.

35  
36 Brean asked if there are any people who wish to speak in opposition to this appeal and in support  
37 of the decision of the Planning Commission and asked them to relate your testimony to the  
38 criteria set forth in the Notice of Appeal and listed at the beginning of this hearing.

39  
40 Maggie Marshall asked the City Council if they want property owners to be able to turn their lots  
41 into private campgrounds. The owners in her neighborhood certainly do not want that. This is  
42 not desirable, is detrimental to the City and is not a necessary use.

43  
44 Brad Webb said that there have been a series of discussions about this issue many times through  
45 out the years. It has been decided that the citizens want to have a higher property values. All of  
46 the property owners have made considerable investments in their property.

1 Webb said that the City receives transient rental tax income from people that stay here. That  
2 income would be lost if property owners are allowed to stay in trailers on their lots. The  
3 community should be a permanent community – not a temporary community.  
4

5 Brean asked if any Councilor had questions of the speaker.  
6

7 Scott asked Webb if there are specific sections of the Code that he is referring.  
8

9 Webb said that he does not have the Code before him and cannot quote the Code. But the Code  
10 reflects the spirit of the law.  
11

12 Brean asked if the appellant wanted to offer rebuttal or other response to any of the testimony in  
13 opposition to the appeal.  
14

15 Buell-McIntire said that the Code reflects the law – not the spirit of the law, and that is what  
16 should be used.  
17

18 Buell-McIntire said that if that as an accessory use, this is an out-right permitted use. Visitors  
19 may stay for up to two weeks, and you can park an RV next to your house permanently. If his  
20 use is occasional then it would have less impact than if they parked there permanently.  
21

22 Brean asked the Planner to give his final comments and any recommendation on the application.  
23

24 Lewis once again said that the Findings and Conclusions should be drafted strongly to clearly  
25 state how the application does or does not meet the criteria.  
26

27 Lewis also recommended that no matter what the outcome is, the City Council refer the item to  
28 the Planning Commission.  
29

30 Curtis Brown asked if he could speak. Buel-McIntire was asked if that would be all right. Buel-  
31 McIntire said that would be fine.  
32

33 Brown said that he did not want the visual impact of the RV. His home is across the street from  
34 the Buel-McIntire lot.  
35

36 Brean asked Buel-McIntire if he wanted to say anything more. He did not.  
37

38 Brean asked if the Council wished to continue or close the hearing. It was agreed to go to  
39 deliberation.  
40

41 Scott said that this is not a legislative hearing and therefore the City Council has to go by what  
42 the current code says today.  
43

44 Rieseck said that these kinds of issues coming provide opportunities for further Code  
45 development. Other cities that have had more of these issues have much larger codes than  
46 Yachats.  
47

48 Scott said that the City Council needed to make sure that their decision is based on the Code

1  
2 Featherkile said that conditional uses are not outright uses, and conditions can be placed on the  
3 permit to mitigate things.  
4

5 Featherkile said that the City Council should make their decision based on their interpretation of  
6 the Code and there are places where the Code is not clear. She believes a decision based on their  
7 interpretation would be defensible.  
8

9 Dunn said that she believes the application meets the Code, although she and the neighbors may  
10 not like it.  
11

12 Brean said that it is possible to write something down without it saying what was actually  
13 intended. In looking at the Code, he thinks the City Council needs to look at the sections in their  
14 entirety. He believes the intent would be that in an R-2 zone a property owner could put a second  
15 living unit on the property temporarily.  
16

17 Dunn said that the Code section referred to is titled "Recreational Vehicles" and ...  
18

19 Brean said he does not believe the City Council wanted people to turn their lots into  
20 campgrounds, but they did want to allow people to have guests for a limited time as a second  
21 living unit.  
22

23 Rieseck asked how the City Council is supposed to represent the people that have submitted  
24 letters.  
25

26 Scott said that the City Council must look at the Code, not the wishes of the neighbors.  
27

28 Lewis agreed that the City Council must look at the criteria.  
29

30 Rieseck asked if the City Council is allowed to interpret the Code in making their decision.  
31

32 Lewis said that the City Council may interpret the Code, but testimony that does not relate  
33 directly to the applicable criteria should not be considered.  
34

35 Featherkile said that the City Council does have the authority to interpret the law.  
36

37 Brean said that the primary use in the zone is residential. The use of an RV would be a secondary  
38 use, and in this case, there is no primary use to be secondary to.  
39

40 Brean asked the Council if they were ready for a motion.  
41

42 Scott said that he thinks it is important for the City Council to direct the Planning Commission to  
43 look at an amendment to the current code.  
44

45 Motion to find that the request satisfies applicable criteria, therefore the Planning Commission's  
46 decision is reversed. In accordance with Yachats Municipal Code Section 9.72.010(B), the City  
47 Council finds that in order to protect the best interests of the surrounding city as a whole the  
48 conditional use permit shall be valid for a one-year period. This approval is based on the first six

conditions identified in the city planner's January 11, 2011 memorandum. City staff is directed to prepare the City Council's Findings and Conclusions, and have the Mayor or designated City Councilor review and sign the Findings and Conclusions on or prior to the January 18, 2011 120-day completion date.

Vote on the motion, Aye – 2 (Dunn, Scott), No – 3 (Featherkile, Brean, Rieseck). Motion failed.

Motion to uphold the Planning Commission's decision to deny the request for a conditional use permit to park a recreational vehicle on their property for temporary living purposes. Staff is directed to draft Findings and Conclusions that the Planning Commission did not error in their decision and that the request does not meet all applicable criteria for the Mayor to review and sign on or prior to the January 18, 2011 120-day completion date.

Vote on the motion, Aye – 3 (Featherkile, Brean, Rieseck), No – 2 (Dunn, Scott). Motion passed.

## **VI. Unfinished Business**

### **A. Chicken Pilot Project**

Brean provided the following suggested revision to existing ordinance:

#### **Section 5.08.020 Keeping of animals.**

Unless specifically authorized by the city council for educational or entertainment or other purposes, no person shall keep or maintain livestock, bees, poultry or other animals, excluding household pets, unless the animals are located more than one hundred (100) feet from any residence other than the residence of the person who owns the animals. *Poultry kept in compliance with this ordinance or authorized by a permit issued by the city council will include no roosters.* The required one hundred (100) foot separation applies to any structures that house the animal, either temporarily or permanently, and the area(s) used by the animals for grazing, feeding, exercising and similar activities. (Ord. 174 § 2, 1995)

Motion to amend the current Code to prohibit roosters, Aye – 5, No – 0.

Brean suggested Parameters for Pilot Project:

#### **Poultry Pilot Project**

In an effort to assess the compatibility of urban chicken raising efforts with other quality of life considerations, the City Council is authorizing the keeping and maintaining of poultry in the City as a pilot project when certain criteria are met. Raising poultry will be authorized by a permit issued by the City when those criteria are met. This permit process will be implemented on April 1, 2011 and continue until it is permanently authorized by the Council, or until it is rescinded. The Council will assess the results of the pilot project at its regularly scheduled meetings in October 2011 and (if necessary) March 2012. If the project is continued, permits will be issued on an annual basis.

In order to be eligible for a permit:



- Poultry must be kept in a clean and sanitary pen or structure, no part of which shall be located less than forty (40) feet from any residence other than the residence owned or occupied by the person owning or possessing the animals. Pen or structure (coop) shall be well built and provide for the reasonable security of enclosed animals from predators. Permittee must agree to secure the permitted animals at night.
- Permit will authorize keeping of up to 3 birds in total, none of which may be roosters.
- Permit application will include acceptance by any neighbor(s) whose home(s) is/are within 100 feet of the coop/pen. Failure to obtain approval signatures from all affected neighbors will result in permit denial.
- Food for the permitted poultry will be stored in a secure area free of vermin and not accessible to bears, raccoons, or other scavengers. When poultry is secured for the night, all food containers will be secured.
- Permit applicants must certify that the affected property is not covered by neighborhood conditions, covenants, and restrictions that prohibit the keeping of poultry.
- Manure must be removed with sufficient frequency to prevent offensive odors. Any manure retained for fertilizer will be spread upon the ground evenly and turned under at once.
- The City will inspect the property and coop prior to issuing a permit. An initial permit fee of \$25 will be charged to cover inspection and processing costs to the City. If there are no complaints or known violations of the permit provisions, subsequent permits (if any) may be issued without cost.
- Complaints received by the City relative to non-compliance with the provisions of the permit will be investigated and, if found valid, may result in cancellation of the permit.
- Any complaints received by the City relative to the keeping of poultry but which do not allege violation of the conditions of the permit will be considered by the City Council when it re-evaluates the Pilot Project.

Motion to approve the criteria and direct staff to implement the necessary administrative process, a resolution will be drafted for the Mayor to sign memorializing the action, Aye – 4, No – 1 (Rieseck).

## **VII. New Business**

### **A. Election of Council President**

Motion to elect Scott Council President, a resolution will be drafted for the Mayor to sign memorializing the action, Aye – 5, No – 0.

### **B. Resolution No. 2011-01-03 – Amendment to 2010-2011 Budget**

Motion to adopt Resolution No. 2011-01-03 – Amendment to the 2010-2011 Budget, Aye – 5, No – 0.

1 **C. Recommendations from Commissions: Memberships**

2  
3 Motion to approve the appointments as recommended, a resolution will be drafted for the Mayor to  
4 sign memorializing the action, Aye – 5, No – 0.  
5

6 **D. Appoint Representative to Cascades West Area Commission on Transportation**  
7 **(CWACT) and Oregon Coastal Zone Management Association (OCZMA)**  
8

9 Motion to appoint Rieseck as the City's representative to CWACT and Brean as the City's  
10 representative to OCZMA representative, a resolution will be drafted for the Mayor to sign  
11 memorializing the action, Aye – 5, No – 0.  
12

13 **E. Recommendation from Parks and Commons Commission: Fragrance Free Value**  
14 **Statement**  
15

16 The Parks and Commons Commission voted at their December 2010 meeting to recommend to City  
17 Council that the following value statement be adopted:  
18

19 *"The City of Yachats supports sustaining healthy indoor air quality. In the interest of*  
20 *promoting the health and safety of the City's citizens, staff and visitors, City facilities*  
21 *open to the public are encouraged to maintain a fragrance-free environment. Please*  
22 *refrain from using scented personal care, laundry, and cleaning products. Thank you for*  
23 *your consideration of others in providing an environment in which every person can feel*  
24 *safe and comfortable."*  
25

26 They also recommended having signs posted near each entrance.  
27

28 Rieseck asked if this would mean the staff would be prohibited from wearing fragrances and if they  
29 would have to change their shampoos and laundry detergent.  
30

31 Brean said that the value statement is intended to encourage not enforce, But if there was a  
32 complaint about any fragrance that the staff is wearing that would need to be addressed.  
33

34 Motion to accept the recommended value statement from the Parks and Commons Commission,  
35 place signs near the entrance to the Commons and add it to the information on the rental contract; a  
36 resolution will be drafted for the Mayor to sign memorializing the action, Aye – 5, No – 0.  
37

38 **F. Policy or Value Statement – Use of Bottled Water**  
39

40 Brean suggested the following wording:  
41

42 Yachats is a village that values natural resources. Water packaged in plastic bottles and  
43 transported from remote locations consumes unnecessary fossil fuel resources and creates a  
44 lasting waste management problem not only for our community, but for the entire planet.  
45 Therefore, the City Council requests that users of the Yachats Commons and other City  
46 properties refrain from the use and sale of water contained in plastic bottles.  
47

1 Motion to adopt the value statement, place signs near the entrance to the Commons and add it to the  
2 information on the rental contract, a resolution will be drafted for the Mayor to sign memorializing  
3 the action, Aye – 5, No – 0.

4  
5 **G. GoYachats Calendar Work Flow Addition**

6  
7 Scott said that he has wanted to have one community events calendar. The current calendars on  
8 GoYachats and the City site are not entirely functional. Staff has to put the information into two  
9 different calendars, manually. By adding this element to the website, the information entered into the  
10 reservation request form will be automatically entered in the calendar. Businesses may also be able  
11 to use the application.

12  
13 This workflow element could be used for other things, such as the complaint system.

14  
15 Motion to approve the workflow element, with the flexible option, the cost not to exceed \$4,500,  
16 funds to come from Visitor Amenities Fund, a resolution will be drafted for the Mayor to sign  
17 memorializing the action, Aye – 5, No – 0.

18  
19 **VIII. Other Business**

20 **A. From the Council** – None.

21 **B. From the Staff** – None.

22  
23 There being no further business before the City Council, the meeting was adjourned at 5:12 PM.

24  
25  
26  
27  
28 \_\_\_\_\_  
29 Ronald L. Brean, Mayor

30 Attest:

31  
32  
33 \_\_\_\_\_  
34 Nancy Batchelder, City Recorder