

**MINUTES
COUNCIL WORKSHOP
APRIL 28, 2015 6:30 P.M.
COUNCIL CHAMBERS**

A Council Workshop was held in the Council Chambers and called to order by Mayor Mark Mace at 6:30 p.m. on April 28, 2015.

COUNCIL MEMBERS PRESENT:

<input checked="" type="checkbox"/> Emelie Eaton	<input checked="" type="checkbox"/> Doug Poehls
<input checked="" type="checkbox"/> Bruce McGee	<input type="checkbox"/> Richard Herr
<input checked="" type="checkbox"/> Chuck Dickerson	<input type="checkbox"/> Scot Stokes
<input checked="" type="checkbox"/> Tom Nelson	<input checked="" type="checkbox"/> Bill Mountsier

OTHERS PRESENT:

Monica Plecker, Planning Director
Heidi Jensen, CAO
Sam Painter, Civil City Attorney
Brent Peters, Fire Chief

Public Input (three-minute limit):

There was no public input.

General items:

- Laurel Fire Department Appointments: Justin Kostelecky, Levi Vandersloot, Dan Wirtzberger, Matt Oswald and Chris Franklin

Brent Peters introduced Justin Kostelecky, Chris Franklin and Levi Vandersloot. The appointments will be on the May 5th council agenda.

Executive Review:

- Resolution – Variance request from Rimrock Chevrolet (PH on May 5, 2015)

Monica Plecker explained the variance request submitted by Steve Zabawa of Rimrock LLC. The application is for a variance for two specific things. One is to tear down an existing freestanding pole and move it. Only one freestanding sign is allowed per property. Rimrock Chevrolet currently has two, so it is considered to be nonconforming. Anytime a nonconforming structure is changed, it triggers that it must come into conformance. Conformance would be one sign, so the first request is that they be able to rebuild the second sign. The second sign would be a new sign in a new location by the interstate that would also be an animated sign. The second request is that they be allowed to have an animated sign. Animated signs are currently not allowed in any way, shape or form by Laurel Municipal Code. Animated signs, as defined for this particular application, are very different from the alphanumeric signs in other places in the city limits, such as at Ricci's or CVS.

Monica explained that there was an incorrect sentence in the notice that was published in the *Laurel Outlook* on April 16th. The notice stated that the applicant applied for a third freestanding pole sign, but the application was to take down the existing second sign and move it. A second notice was mailed out on April 17th and a corrected ad was published in the *Laurel Outlook* on April 23rd.

The property owner submitted a variance application. Currently, the property has two freestanding pole signs that are not animated. The letter which accompanies the application states they “propose to remove the Used Car sign on SE 4th Street and replace it with a computer controlled variable Message Center on the South end of the property to address the Interstate.” The letter further states that the “dealership has no presence on the Interstate because of national requirements for positioning the GM logo sign, as well as difference in grade between the Interstate and Chevrolet properties.”

Laurel Municipal Code 15.40.130.H states that “One on-premise, freestanding sign may be installed to a height of forty feet and may be a maximum of three hundred fifty square feet if the principal purpose of such signs is to address interstate traffic as determined by the director. The sign must be oriented perpendicularly to the interstate so the sign is visible to interstate travelers.”

The signage plans provided by the applicant propose an animated sign. LMC 15.40.040 defines an animated sign as “any sign that uses movement or change or lighting to depict actions or create a special effect or scene.” Furthermore, LMC 15.40.050.E states that animated signs are prohibited.

Monica provided copies of Laurel Municipal Code 15.40 Sign Code as a reference for the council.

The applicant has provided an application for variance, accompanying letter, written response to criteria for a variance and sign drawings that depict material and coloring. There will be a public hearing on May 5th and the property owners within 300’ of the property have been notified.

Monica explained that this particular variance application did not go before the Planning Board for a recommendation. The Sign Code, as recently discussed by the council, is located in Chapter 15, which does not fall under the Planning Board. The council has passed an ordinance to move the Sign Code to Chapter 17, as it is a use of land, so any further variances will have Planning Board input in the future. The council still needs to proceed under the same requirements of a variance. Seven criteria need to be met before the council should approve a variance. The applicant provided a written response to address the seven criteria.

Upon staff review of the application and the supplemental materials, Monica stated her recommendation that the variance be denied. Substantial evidence to support the criteria for a variance has not been presented by the applicant. Furthermore, the protection of entryway points into the community has always been a priority of the Planning Board and the city council. Most recently the Planning Board and council have taken action to protect the character of the commercial districts within the city by adopting overlay districts. An animated sign like the one proposed would be detrimental to the character of the SE 4th Street area. Furthermore, the ordinance allows for only one freestanding sign. While the two existing signs were permitted, a change in ordinance makes the property nonconforming. Nonconforming structures are permitted to continue as long as there is no change. Without the granting of this variance, the existing second sign could be used. The code allows for the sign to be built to 40’ which can be visible from the interstate.

In the event that Council wishes to grant the variance, Monica prepared some staff suggested conditions.

1. The applicant shall apply for a sign permit before constructing any new sign.
2. The Used Car sign shall be removed prior to any construction of the sign proposed in this application.

3. Any alteration of the sign shall be permitted by the City.
4. Before the construction of any sign, the applicant shall contact MDT and apply for an necessary permits that may be required as the structure is located within 600' of a controlled roadway.

Monica asked if there were questions and encouraged the council to look closely at the picture of how the sign would look.

Chuck asked a question regarding comparison to the Walmart sign and animated signs.

Monica explained that there is an issue that it is an animated sign, as there is not a single animated sign in the City of Laurel. There are potential safety concerns and distraction concerns with an animated sign being so close to the interstate and just off the exit ramp. The Walmart sign is legal, is not animated, and is not more than 40' high. Rimrock Chevrolet can build a sign up to 40' and one of their existing signs is 40'. The sign at Walmart is within the Entryway Zoning District. Monica recently presented the council with the Planning Board's recommendation to change the Entryway Zoning District to include this particular property and some other properties. A different set of rules applied to Walmart, as they are within the Entryway Zoning District. She stated that the animation is a major problem.

Bill questioned the applicant's response on the fourth criteria, which said that "the sign code was changed by the City."

Monica stated that substantial evidence was not provided that these seven criteria were truly being met or that the responses even address the issues listed that should be met. The applicant will attend the public hearing on May 5th. Monica had a discussion today with the applicant, Steve Zabawa, and explained to him that there was inadequate information in addressing these and she had prepared her recommendation based on the information received.

Bill asked how far the sign would be from the actual exit off the interstate.

Monica did not have the exact dimension but could ask for the information. She showed the proposed location of the sign on an aerial drawing, as well as on a picture of the property. By the drawings, it appears that the sign will be on the very edge of the pavement and the fence is not very far from where vehicles come off the exit.

Chuck asked if the City-County Planning Board reviewed the application.

Monica again explained that the Planning Board did not review this because the Sign Code is not located in LMC Chapter 17. It still is a variation or deviation from the code and should be processed as a variance. The only difference is that the Planning Board did not have a public hearing or discussion. Since the council has approved moving the Sign Code via Ordinance No. O15-02, the Planning Board will be able to review and make a recommendation for future applications.

There was discussion regarding the advantages of having an animated sign as a natural marker for the exit ramp in bad conditions like fog, rain and snow and the responses of Timothy Thelen from Epcon Sign regarding the seven criteria.

Monica stated that the responses are concerning and were not well thought out. All seven of the criteria need to be met in order to grant a variance and LMC is very clear that animated signs are not allowed.

Bruce asked why Laurel does not allow animated signs, as many communities have animated signs. Animated signs are becoming the wave of the future.

Monica did not know the background of why animated signs are not allowed. She explained that many recent discussions have focused on being careful of what is allowed in the business districts to keep a certain feel of local character. Laurel does not want to allow just anything in order to meet the national requirements of a franchise. She agreed to research the minutes to determine when the change happened if it was not in the original ordinance.

There was further discussion regarding the future of animated signs, the need to consider variance requests and follow the current ordinances, the suggestion for the council to review the current ordinance, the requirement to review this variance request under the current ordinance, the suggestion that the location of the proposed sign is the real issue, the possibility of traffic accidents if the animated sign is approved, and the Planning Board's input in future variance applications.

Monica stated that the council has put the current code in place, so that is what she will continue to enforce. Based on everything that was presented, she stands behind her recommendation.

- Resolution – Loan for SCBAs (Fire Department)

Heidi explained that the SCBAs, self-contained breathing apparatus, for the Fire Department are beyond extinct and replacement parts are not available. The fire chief talked to the clerk/treasurer and CAO about some way to replace the SCBAs for the department. The Intercap loan would entail \$160,000. For the last three years, the General Fund has loaned the Ambulance Department \$25,000/year to make the payments on the building. The three-year time period of subsidizing the ambulance has ended. The \$25,000 will be budgeted for replacement of the SCBAs. The fire department has a CIP Fund that receives a percentage of the fire districts fees every year. This Intercap loan would be for seven (7) years and would be a rollover of the engine payment into the new loan. It would be the exact same payment that the fire department is currently making on a \$160,000 loan. The engine was paid off, the \$25,000 was more freed up and this loan was needed. This would still allow for \$4,928 to go into the Fire Department CIP on a yearly basis, and that amount could increase as the district contract amounts increase. Council approval is needed to apply for the Intercap loan and the SCBAs will be ordered after the Management Budget is effective on July 1st.

Chief Peters stated that the current SCBAs are nearly 20 years old and are no longer in compliance with the NFPA, National Fire Protection Agency. The manufacturer of the current SCBAs went out of business several years ago and the stock of replacement parts that was on the market cannot be found anymore. The new packs completely meet and exceed NFPA standards. The original quote from Municipal Emergency Services was \$265,000 for the SCBAs, but they ended up knocking off \$41,000.

There was discussion regarding the number of packs needed, the distribution of the packs on the fire trucks, the length of time the packs last, the suggestion to stagger the purchase of the packs with a

replacement program, use of the old packs in a training controlled environment, the 20-year lifespan of the new packs, and the suggestion to maintain a log for usage of the packs.

- Resolution – Franchise agreement with Charter Communications

Heidi asked Mayor Mace to remove the item, as the agreement is not ready at this time.

- Resolution – Emergency Services Mill Levy

Heidi explained that the same resolution format was used for the park mill levy. The amounts were changed to reflect the generated cost of \$926,000 or 131.16 mills. The assessment would be \$311.96 on the fair market value for a \$100,000 home and \$623.92 for a \$200,000 home. The resolution for a ballot referendum was recommended by the Emergency Services Committee.

Doug stated that the Emergency Services Committee reviewed the resolution last night. The committee asked if the District Impact could be assessed on the Assessed Value of a home instead of the Fair Market Value of a home. The change would be needed in the resolution and on the ballot.

Sam will check the statute, but did not see a problem in changing it if it is not specifically required by statute.

There was discussion regarding the unending timeframe for the district, the fact that the amount of the assessments would not change unless the council chose to do so, the possibility that the \$926,000 would increase with additional properties added in the city, the need for the police department to prioritize calls, and the impact when the City of Laurel becomes a Class 2 city.

The Emergency Services Committee's recommendations included asking for the total amount needed in order to provide a safe community and keep emergency services personnel safe and not to have a sunset on the mill levy.

Doug stated that the committee is working with some community members on a marketing plan and will meet again on May 18th.

- Resolution – Reclassification appeal from Utility Maintenance Workers

Heidi stated that this is a discussion item, not a resolution item. The council packets included a short memo of the reclassification appeal process, the extension that was signed between the union and Heidi, and the classification appeal information that is in the Union 316 contract. The city has not received a classification appeal since the 1990's, so she gave a brief history of how this works. On March 5th, the classification appeal regarding the classification of the Public Works Utility Maintenance Workers II and III was received by the Public Works Department. Staff reviewed the request and the Classification Committee, consisting of three Union members, the Mayor, CAO, PWD, and three council members and in an advisory role the City Civil Attorney, met on March 31, 2015, to hear both sides of the appeal within the 30-day limit. At that meeting, it was determined that a subsequent discussion was needed. Heidi and the Union President signed the extension and agreed to meet on April 14th. With advisement from the city attorney, the second discussion was more concise than the first meeting. At the April 14th meeting, an affirmative motion was made to approve the suggested reclassification. The motion was seconded and voted on. The motion failed 3-6, thus denying the request. No formal council action is needed, but the union contract states that the council must be made aware that this happened.

- Resolution – Contract with Sprague Roofing

Heidi explained that Sprague Roofing, who is working on the new brewery on Main Street, submitted a proposal to replace the roof on city hall. If the council approves the contract Sprague Roofing can start next Wednesday. Heidi stated that a contract for replacement of the air conditioner would be presented under other items tonight. If the contracts are approved, both contractors will start working on Wednesday, May 6th.

There was discussion regarding the HVAC unit, which will need to be removed with a crane, the need to do the roofing and A/C replacement at the same time, and the roofing work that is needed on the FAP, the library and the concession stand.

- Council Issues:

- Park Board recommendations:

- Jaycees lease

Bruce mentioned that the Park Board recently forwarded some recommendations for the leases in Riverside Park. He understands that the Jaycees lease is on hold until the Chamber's lease has been finalized, but he would like all of the leases to be finalized soon.

- Transfer ownership or lease of log building in Riverside Park

Bruce stated that the Park Board recently had a lengthy discussion concerning the log building in Riverside Park that the Rod and Gun Club has used for years for their meeting place. The 2011 flood annihilated it and there was some confusion and misunderstanding as to who should do what and the building has not been useable. Since Montana Code permits municipalities to turn over facilities to individual groups provided certain criteria is met, it was the consensus of the Park Board that, since the Rifle Club has a long history with this building and would like to have it, the Park Board would like to see them have it.

Sam Painter cautioned the council that mold has become more of a problem in the last few years. There is a substantial amount of case law of negligent lawsuits against entities and owners who transfer ownership of buildings that are either not habitable or full of mold, especially the kind of mold in the buildings in Riverside Park. If the council decided to do it, as it has the legal right to do, drafting the documents to actually convey would be so full of disclosures that he would be hard-pressed to write how many disclosures would be necessary to make sure no claims came back against the city. The big problem is that there are really no set limits on mold. If someone conveys a building believing it has safe levels of mold, somebody takes possession of it and there is illness, the seller will get sued and be accused of negligence for not fully disclosing. Since there are no limits for disclosure, it makes it difficult to defend this kind of a lawsuit.

Sam suggested it could be negligent on behalf of the city to give a building to a club if that club is going to spend a substantial amount of money on it and the building is going to flood again. The city is on notice now that these buildings have a tendency to flood and to be substantially damaged and the result is apparently mold. There are a number of problems with conveying the building. This is a difficult no-win situation because public funds could be used to try to clean it up, but it could be questioned if that is a proper use of public funds. With the history of the river, there is no guarantee that the river is not going to flood again. Sam does have some concerns with the proposal to convey these buildings, especially in their current state, which is problematic.

There was discussion regarding conveying the buildings with an "as is" clause.

Sam explained that an agreement could be drafted as tight as possible, but there cannot be a disclaimer of all of the warranties. The city is on notice that there are mold issues and does not know the extent of the problem. Mold claims are difficult and would probably come back to the owner, the city.

There was further discussion regarding a club leasing the land and constructing a pole building, the need for a well-crafted document and the need to hire an environmentalist to assess the problem, and the suggestion that times have changed and the entities need to find a more public place to meet in downtown Laurel.

Curt Lord, Laurel Rod and Gun Club, spoke regarding the club's desire to restore the building.

Irv Wilke, 1017 Seventh Avenue, addressed the city attorney's comments. He stated that the club was prohibited from fixing the building right after the flood, even though they had the money and the person to do it. The club wants to fix up the building, which has been used for Hunter Education for many years.

Sam explained that, if there is going to be litigation over the building, the litigants would not just look at the club, but would look back to the city and the conveyance documents to determine if the city fully disclosed the amount of damage and mold. If the council wants to convey the buildings, it must be done properly through a lengthy process that would disclose lots of information and require spending money to make sure what is involved.

Mayor Mace stated his concerns with the legal ramifications, the ongoing mold issues in the buildings, possible future flooding events, and the need to go through the correct process if the council chooses to convey the buildings.

Bruce stated that the council is talking about one building, not all of them, the condition of the buildings is different in different locations of the park, and the city has a lot of liability issues. He does not think that fear of litigation is a proper motivation, but the emphasis should be to find possible solutions. He stated that a mold disclosure document is required for every property sold in Montana.

There was discussion regarding who would pay for the testing and inspections, the money Exxon-Mobil donated that is in a restricted fund, and the suggestion for both parties to agree on a licensed inspector to evaluate the mold issues.

Sam explained that these items are negotiated items. If the council wants to go forward, a buy/sell or conveyance document would need to include these provisions.

Mayor Mace asked if the council wanted to go forward.

Sam suggested adding the item to the agenda as a motion item to authorize the CAO and City Attorney to work with the club to see if conveyance is possible. If the council approves, there will be a record that the council wants to pursue it. That does not mean the council is approving the conveyance, but just gives authority for the staff to move forward. The council would be involved in decisions.

- Update on 2011 Yellowstone River flooding event

Heidi explained that the legislature has adjourned without passing the major infrastructure bill or a specific amendment or line item for Laurel. She could not have worked any harder to try to get the \$2.7 million funding, as it consumed the last 89 days. Governor Bullock's office did not return her call today. Heidi hopes that the legislature calls a special session. The legislature did not pass an infrastructure bill two years ago either, so many of the projects in this bill were from two years ago. The State should not allow infrastructure to be at a halt for four years. With four shutdowns this year at Laurel's water treatment plant, the city is pushing it to make it to November to get the construction project started. The 60 percent plans are complete and the easements have been drafted. Heidi will wait to talk to the governor's office to see how to proceed.

Mayor Mace thanked Heidi for the long hours she put in on the City of Laurel's behalf.

- Lease Agreements
 - Update on Little League lease (Emelie Eaton)

Heidi stated that Little League submitted their insurance certificate and signed the lease today and will pay the \$500 lease fee soon. Little League opted out of the concession stand for this year.

Other items

- Resolution – Contract with Central Heating and Cooling

Heidi stated that the contract is for replacement of the cooling system on city hall and will be installed concurrently with the roof replacement, should the council approve the two contracts. Budget/Finance Committee recently approved the expenditure.

Review of draft council agenda for May 5, 2015

- Poppy Day Proclamation – Friday, May 22, 2015
- Public Hearings:
 - Variance request from Rimrock Chevrolet
 - Ordinance No. O15-03: Entryway Zoning District
 - Ordinance No. O15-04: SE 4th Street Overlay District

Attendance at the May 5, 2015 council meeting

All council members present will attend.

Announcements

Chuck thanked Heidi for her hard work.

Bruce dittoed Chuck's comments about Heidi's hard work and stated that neither the council nor Heidi could control the legislature. He assured her that the council feels good about her hard work.

Emelie mentioned that the new microphones need to be turned off at the end of the meetings.

Heidi stated that the Arbor Day celebration is scheduled on Tuesday, May 5th, at 10:30 a.m. in Thomson Park. A tree that DNRC overly pruned about eight years ago when they were doing a pruning class will be replaced. Thirty-four Laurel Head Start children will be the guests of honor this year and the Tree Board will hand out flowers to all of them.

The council workshop adjourned at 8:12 p.m.

Respectfully submitted,

A handwritten signature in cursive script that reads "Cindy Allen".

Cindy Allen
Council Secretary

NOTE: This meeting is open to the public. This meeting is for information and discussion of the Council for the listed workshop agenda items.