

THURSDAY, SEPTEMBER 9, 2021

CITY HALL COUNCIL CHAMBERS

CITY OF ROGUE RIVER, JACKSON COUNTY, OREGON

CALL TO ORDER The Special Council meeting was called to order by Mayor Wayne Stuart at 6:00 p.m.

QUORUM **COUNCIL MEMBERS PRESENT:**

Mayor Wayne Stuart
City Councilor Jack Bird
City Councilor Pam VanArsdale
City Councilor Rick Kempa
City Councilor Barb Hilty
City Councilor Don Daugherty
City Councilor Barb Gregory

ALSO PRESENT:

Mark Reagles, City Administrator
Carol Weir, City Recorder
Mike Bollweg, Public Works Director
Ryan Nolan, City Planner
Paige Chick, Clerk Typist (left at 7:55 pm)

ATTORNEY PRESENT:

Michael Franell, Attorney at Law

MEDIA PRESENT:

Brian Mortensen, Rogue River Press

A quorum was present and due notice had been published.

NEW BUSINESS:

AGENDA ITEM 1 **Public Hearing:** Adopt the Planning Commission's recommendation regarding ANX 2021-01, an Annexation and Zoning Designation for 8.17 acres of property in the urban growth boundary of the City of Rogue River at 395 West Evans Creek Road, Rogue River, Oregon. Applicant: Sarah Waggoner, Owner.

Mayor Wayne Stuart declared the Public Hearing opened at 6:07 p.m. to accept comments for property described as T36S R4W Section 16A, Tax Lot 4300 by reading a prepared document which is a permanent part of the file.

Official notice had been given that the City Council would consider laws and ordinances without having them established as evidence in the hearing record and that a copy of the minutes of the hearing would be available in the City offices along with the rules and procedures he was reading and of which become a permanent

record of the file.

Mayor Wayne Stuart asked the City Councilors if they wished to declare ex-parte contact, site visit, or felt they had a conflict of interest, bias, or other reason to be disqualified from participating in the hearing. No comments were heard.

Mayor Wayne Stuart asked if there was anyone in the audience who wished to challenge any of the City Councilors qualifications to participate in the hearing. No comments were heard.

City Planner Ryan Nolan presented the following staff report for the record:

FINDINGS:

- A. All requirements of the Rogue River/Jackson County Urban Growth Boundary and Policy Agreement are being met through potential approval of this application for annexation. Specifically, urban facilities and services are in adequate condition and capacity to accommodate potential growth based on the new zoning.
- B. The property proposed for annexation is contiguous to current City limits along the full southern property line.
- C. The subject property is within the Urban Growth Boundary, it is contiguous to the current City limits, and city services and facilities are available and adequate to meet the needs of the site.

CONCLUSION: The subject property is located within the City of Rogue River Urban Growth Boundary and the area is contiguous with the existing City boundary. The proposed annexation meets all necessary requirements and criteria in order to be in compliance with requirements of the Oregon Statutes. Public utilities and services are adequate to accommodate urban levels of development on the property. Upon approval of the annexation, the property will be designated as Low Density Residential (R-1-12), which is consistent with the Comprehensive Plan. Development will be subject to compliance with city ordinance standards in effect when applications are submitted. The Planning Commission reviewed the request and suggests that together with the Findings prepared by the applicant the City Council should approve Annexation 2021-01 to annex 395 West Evans Creek Road, more particularly described as Assessor's Map 36-04-16A Tax Lot 4300, and assign the Comprehensive Plan Designation of Low Density Residential and Zoning Map Designation of R-1-12.

Ken Guziak of Rogue River commented he was not opposed to the annexation but hated to see the character of the property change from a wildlife habitat with a creek that runs through it with turkey and deer which would be gone. He said he would like to see part of the property designated as a wildlife habitat corridor with the creek and high water conditions along with a buffer between the mobile home park and the development.

Clark Stevens with Richards, Stevens and Associates said he was the land use consultants for the property owner Sarah Waggoner for the annexation and zone change application. He commented that their application demonstrated that they were in compliance with Oregon Revised Statutes, the city's land development code and comprehensive plan regarding annexations. He felt they met and were in compliance with the requirements of being located within the urban growth boundary, abutting the city limits and adequate city services to serve the site. In addition they needed to address transportation and handed out a document showing sufficient capacity standards along West Evans Creek Road to change the property zoning to low density R-1-12.

Mayor Wayne Stuart declared the public hearing closed at 6:22 p.m.

City Councilor Pam VanArsdale asked if the survey map was in stone being concerned with the long street ending in a cul-de-sac.

Mr. Stevens replied that it was a concept design and had been in discussion with staff and there were two stub streets to the north and showing the future street circulation would be developed to code standards.

MOVED (HILTY), SECONDED (GREGORY) AND CARRIED TO ADOPT THE PLANNING COMMISSION'S RECOMMENDATION REGARDING ANX 2021-01, AN ANNEXATION AND ZONING DESIGNATION FOR 8.17 ACRES OF PROPERTY IN THE URBAN GROWTH BOUNDARY OF THE CITY OF ROGUE RIVER AT 395 WEST EVANS CREEK ROAD, ROGUE RIVER, OREGON.

AGENDA ITEM 2 **Public Hearing:** Adopt the Planning Commission's recommendation regarding CUP 2021-03, a Revocation of a Conditional Use Permit for property at 499 East Main Street, Rogue River, Oregon. Applicant: Hurst/HRP, LLC, Owner.

Mayor Wayne Stuart declared the Public Hearing opened at 6:24 p.m. to accept comments for property described as T36S R4W Section 15CD, Tax Lot 802 by reading a prepared document which is a permanent part of the file.

Official notice had been given that the City Council would consider laws and ordinances without having them established as evidence in the hearing record and that a copy of the minutes of the hearing would be available in the City offices along with the rules and procedures he was reading and of which become a permanent record of the file.

Mayor Wayne Stuart asked the City Councilors if they wished to declare ex-parte contact, site visit, or felt they had a conflict of interest, bias, or other reason to be disqualified from participating in the hearing.

City Councilor Pam VanArsdale stated that she had been to the Lil' Pantry many

times.

Mayor Wayne Stuart asked of anyone in the audience who wished to challenge any of the City Councilor's qualifications to participate in the hearing.

Attorney Garrett West asked Councilor VanArsdale when she last visited the site.

City Councilor VanArsdale replied she had made a purchase the prior week.

Attorney West asked if she only visited the Lil' Pantry or had she visited the back of the lot.

City Council VanArsdale replied just the store in front and the car wash when it was working.

City Planner Ryan Nolan commented that this item was only to adopt the finding of the Planning Commission and that they would be hearing the appeal later in the meeting. And presented the follow staff report:

The Planning Commission on its own motion voted to revoke Conditional Use Permit 2016-03 in accordance with the Rogue River Municipal Code Title 17 Zoning, RRMC Chapter 17.100.100.

- A. The Planning Commission held a properly noticed public hearing on this matter on August 10, 2021. The City Planner mailed notice to property owners within 250-feet of the subject property and posted notice within the local newspaper noticing the public hearing and requesting public comment.
- B. The original approval of CUP 2016-03 on November 8, 2016 contained fourteen (14) conditions of approval.
- C. The Planning Commission reviewed testimony from City Staff (to include photos of the site from August 4th), concerned neighbors, and the permit holder related to failure to comply with the approved conditions of approval.
- D. At the conclusion of the said public hearing and upon conclusion of said deliberations, the Rogue River Planning Commission, upon a motion duly made and seconded, approved the proposed project planning file number CUP 2021-03 with the incorporated findings and conditions recommended in the staff report dated August 3, 2021. The Planning Commission voted 5-0 on a roll call vote to approve CUP 2021-03 and revoke CUP 2016-03 due to the failure to comply with conditions 1, 3, 4, 6, 7, 8, 9, 12 and 13 of the original approval.
- E. The Planning Commission decision was made pursuant to the findings in the staff report, the full testimony heard in the public hearing, and the information provided in the meeting packet, all of which are hereby fully incorporated herein by reference; and the Final Order dated August 11, 2021.

City Planner Ryan Nolan finished by saying the purpose was for the City Council

to adopt the findings of the Planning Commission.

Attorney Ben Freudenberg, representing Hurst HRP, LLC and Dale Hurst, objected to the findings for the purpose of perfecting their appeal which was Council Agenda Item No. 4. He did not think it was necessary unless the City Attorney had a different opinion to go at length to disagree with the decision they object to the adoption of the findings and during Item No. 4 they would be presenting testimony from experts.

City Attorney Michael Franell stated that he agreed that it was not necessary at that point for the City Council to adopt the findings that would be handled in the appeal process.

City Planner Nolan Ryan asked the City Attorney for clarification that since the code stated that the decision was final on adoption of the City Council shouldn't they go through the process of adopting it to clarify that they had an adopted final decision.

City Attorney Michael Franell agreed that since the code did state that the findings of the Planning Commission be adopted by the City Council.

City Planner Nolan Ryan suggested to the Mayor that they note the objection from Attorney Ben Freudenberg and that the City Council move forward and potentially with the adoption the findings there for making it a final decision which would allow a valid appeal to move forward.

Mayor Wayne Stuart declared the public hearing closed at 6:31 p.m.

MOVED (VANARSDALE), SECONDED (BIRD) AND CARRIED TO ADOPT THE PLANNING COMMISSION'S RECOMMENDATION REGARDING CUP 2021-03, A REVOCATION OF A CONDITIONAL USE PERMIT FOR PROPERTY AT 499 EAST MAIN STREET, ROGUE RIVER, OREGON, APPLICANT: HURST/HRP, LLC, OWNER.

AGENDA ITEM 3 **Public Hearing:** Adopt the Planning Commission's recommendation regarding CUP 2021-04, a Conditional Use Permit for vacant property at the corner of East Main Street and Wards Creek Road, Rogue River, Oregon. Applicant: Rob Johnson with AB Chase Construction.

Mayor Wayne Stuart declared the Public Hearing opened at 6:32 p.m. to accept comments about a recommendation regarding CUP 2021-04, a Conditional Use Permit authorizing temporary placement of shipping containers for nearby construction use.

Th property described as T36S,R4W, Section 22BA, Tax Lot 900, located on the corner of Wards Creek Road and North River Road.

Official notice had been given that the City Council would consider laws and ordinances without having them established as evidence in the hearing record and that a copy of the minutes of the hearing would be available in the City offices along with the rules and procedures he was reading and of which become a permanent record of the file.

Mayor Wayne Stuart asked the City Councilor's if they wished to declare ex-parte contact, site visit, or felt they had a conflict of interest, bias, or other reason to be disqualified from participating in the hearing.

City Councilor Pam VanArsdale disclosed yes, she drove by the site everyday.

Mayor Wayne Stuart asked of anyone in the audience who wished to challenge any of the City Councilor's qualifications to participate in the hearing. No comments were heard.

City Planner Ryan Nolan presented the following staff report for the record:

The action request before the City Council was to adopt the findings of the Planning Commission for CUP 2021-04, a Conditional Use Permit authorizing the temporary placement of shipping containers on the corner of Wards Creek Road and North River Road for nearby construction, the Planning Commission found that with conditions the request met all the requirements of the municipal code:

- A. List Conditions to be met prior to placement of any storage containers on site:
 - 1. A driveway shall be installed in conformance with City Standards, the location (as far as practical from the Wards Creek Road and East Main Street intersection) and design to be approved by City Public Work's Director.
 - 2. A site grading and drainage plan shall be reviewed and approved by the City Public Work's Director. The plan shall include measures to prevent dust, mud tracking, and harmful impacts to storm drain flows from on-site drive-able areas.
- B. List Conditions to be met during operation of staging area:
 - 1. Area to be maintained in litter free condition, and tall grass and weeds to be maintained.
 - 2. No storage material or construction equipment shall create a vision clearance violation at the intersection of Wards Creek Road and East Main Street, nor at the driveway entrance.
 - 3. The applicant shall obtain a business license before conducting business.
 - 4. Business operations shall be subject to DEQ requirements and the city Nuisance Ordinance, RPMC Chapter 8.05, specifically as they relate to noises, odors, and vibrations.
 - 5. The facility and proposed operations shall be reviewed and approved by the Rogue River Fire Marshal and City Public Work's Director.

6. Any outdoor lighting shall be so designed and installed that direct rays are not toward or parallel with East Main Street or toward any residential use and shall be downward directed.
7. Construction related noise shall not start prior to 7:00 a.m.
- C. List Conditions to be met within 2-years (or earlier if site ceases to be used as a temporary staging area):
 1. The site shall be returned to a mow-able condition to allow the property to be maintained in a condition that reduces fire hazard.
 2. Any detrimental impacts to the storm drain system in the area (caused by the temporary storage site) shall be corrected to the satisfaction of the Public Work's Director.

Approved by the City of Rogue River Planning Commission on the 10th day of August 2021 and recommend the City Council adopt their findings.

Mayor Wayne Stuart declared the public hearing closed at 6:36 p.m.

MOVED (HILTY), SECONDED (VANARSDALE) AND CARRIED TO ADOPT THE PLANNING COMMISSION'S RECOMMENDATION REGARDING CUP 2021-04, A CONDITIONAL USE PERMIT FOR VACANT PROPERTY AT THE CORNER OF EAST MAIN STREET AND WARDS CREEK ROAD, ROGUE RIVER, OREGON. APPLICANT: ROB JOHNSON WITH AB CHASE CONSTRUCTION.

AGENDA ITEM 4 **Public Hearing:** Hear an appeal filed by the applicant regarding CUP 2021-03, a Revocation of a Conditional Use Permit for property at 499 East Main Street, Rogue River. Applicant: Hurst/HRP, LLC, Owner. Representative: Ben Freudenberg, Attorney.

Mayor Wayne Stuart declared the Public Hearing opened at 6:38 p.m. to accept comments about a recommendation regarding CUP 2021-03, Appealing a Revocation of a Conditional Use Permit.

The property described as T36S,R4W, Section 15CD, Tax Lot 802, located at 499 East Main Street, Rogue River, Oregon.

Official notice had been given that the City Council would consider laws and ordinances without having them established as evidence in the hearing record and that a copy of the minutes of the hearing would be available in the City offices along with the rules and procedures he was reading and of which become a permanent record of the file.

Mayor Wayne Stuart asked the City Councilor's if they wished to declare ex-parte contact, site visit, or felt they had a conflict of interest, bias, or other reason to be disqualified from participating in the hearing.

City Councilor Barb Hilty said she recently had purchased gas at Lil' Pantry.

City Councilor Barb Gregory said she had made a purchase at Lil' Pantry but had not been to the back of the property.

Mayor Wayne Stuart asked of anyone in the audience who wished to challenge any of the City Councilor's qualifications to participate in the hearing.

Attorney Garrett West for Hurst/HRP, LLC said he wanted to clarify for the record that City Councilor Pam VanArsdale had commented she had visited Lil' Pantry but not the warehouse. He also clarified with City Councilor Barb Gregory that she also had not visited the back of the property and she agreed she had not been to the back of the property.

City Planner Ryan Nolan presented the following staff report for the record:

City Planner Ryan Nolan said the action before the City Council was to consider an appeal of the Planning Commission decision approving revocation of a Conditional Use Permit grants for CUP 2016-03 to allow a warehouse use in general commercial zoning for ice production, storage, and distribution.

In accordance with Chapter 17.100.100 the planning commission, on its own motion at a public hearing, may revoke any conditional use permit for noncompliance with the conditions set forth in granting said permit.

The 2016 approval of the Warehouse Use through CUP 2016-03 provided a condition of approval that no use shall be permitted and no process, equipment or materials shall be used which are found by the Planning Commission to be harmful to persons living or working in the vicinity or by reason of odor, fumes, dust, smoke, cinders, dirt, refuse, water-carried waste, noise, vibrations, illumination, glare, or unsightliness or to involve any hazard of fire or explosions. Similarly, the approval required the applicant to comply with all city, state and federal requirements.

Staff finds that the applicant has continually failed to adequately address excessive noise created as part of the warehouse use. Staff finds that the applicant has failed to maintain tall weeds on the site in violation of City code. Staff finds that an unapproved gravel area is still being used as a large truck turnaround area in violation of City standards. Staff also finds that the applicant has failed to comply with grease trap requirements on the site in violation of City standards. Based on these specific violations and a general failure of the applicant to adequately address the conditions of approval, staff recommended that the Planning Commission revoke Conditional Use Permit 2016-03 allowing Warehouse use at 499 East Main Street, more accurately described as Map Number 36-04-15CD Tax Lot 802. The Planning Commission held a properly noticed public hearing on this matter on August 10, 2021. The City Planner mailed notice to property owners within 250-feet

of the subject property and posted notice within the local newspaper noticing the Public Hearing and requesting public comment.

The original approval of CUP 2016-03 on November 8, 2016 contained fourteen (14) conditions of approval.

The Planning Commission reviewed testimony from City Staff (to include the photos of the site from August 4, 2021), concerned neighbors, and the permit holder related to failure to comply with the approved conditions of approval.

At the conclusion of the said public hearing and upon conclusion of said deliberations, the Rogue River Planning Commission, upon a motion duly made and seconded, approved the proposed project planning file number CUP 2021-03 with the incorporated findings and conditions recommended in the staff report dated August 3, 2021. The Planning Commission voted 5-0 on a roll call vote to approve CUP 2021-03 and revoke CUP 2016-03 due to the failure to comply with conditions 1, 3, 4, 6, 7, 8, 9, 12, and 13 of the original approval.

The Planning Commission decision was made pursuant to the findings in the staff report, the full testimony heard in the public hearing, and the information provided in the meeting packet, all of which are hereby fully incorporated herein by reference; and this Final Order dated August 11, 2021.

On August 17, 2021 the applicant filed an appeal of the Planning Commission decision regarding CUP 2021-03 and the revocation of CUP 2016-03, asking the City Council to overturn the Planning Commission decision and to deny CUP 2021-03.

Staff recommends that the City Council uphold the Planning Commission decision to approve CUP 2021-03 and revoke Conditional Use Permit 2016-03 due to ongoing code violations and failure to comply with the conditions of approval, specifically failing to address excessive noise, failure to maintain tall weeds, failure to properly operate a grease trap on the subject site, and failure to address an unapproved gravel area used for large truck operation.

City Planner Ryan Nolan told the City Council it was for them to determine if the Planning Commission acted correctly revoking the original conditional use permit. He said that the City Administrator, Public Works Director had a lot of information to provide along with the applicant's representatives. He also informed the City Council that their options were to uphold the Planning Commission's decision which staff recommended to approve CUP 2021-03 revoking CUP 2016-03 for failing to comply, continue the public hearing, or reverse the Planning Commission's decision.

City Planner Ryan Nolan asked both the City Administrator and Public Works

Director if they had any comments about the current condition of the ice plant.

Public Works Director Michael Bollweg said that shortly after the last hearing held by the Planning Commission Mr. Hurst had a representative from his organization approach him about taking care of some of the fire issues. That literally occurred the next day. They were looking at mitigating the vegetation issues as far as being a fire hazard. They applied for a grading permit for erosion control and arranged with the fire department to have a fire hose on site while grading the back half of the lot. The front half of the lot had still not been maintained with vegetation still being too high. Short of that he had not seen any other changes short of that the drivers were still using the other piece of property to maneuver and park vehicles. The vehicles were still sitting and idling however he did notice a new sign posted telling the drivers not to do that. He finished with "at the time that was all he knew."

City Planner Ryan Nolan read the conditions that the Planning Commission found Mr. Hurst's Ice House to be in current violation of:

1. To operate consistently with the applicant's application, Finding of Facts and letter of intent including "Hours of delivery will be Monday – Friday from 7:00 a.m. to approximately 3:00 p.m., usually being loaded 1-2 times per business day, depending on the season.
3. No use shall be permitted and no process, equipment or materials shall be used which are found by the Planning Commission to be harmful to persons living or working in the vicinity or by reason of odor, fumes, dust, smoke, cinders, dirt, refuse, water-carried waste, noise, vibrations, illumination, glare, or unsightliness or to involve any hazard of fire or explosions.
4. Where a site adjoins or is located across an alley from a residential district, a solid wall or fence, six-feet in height, shall be located on the property line common to such districts.
6. Outdoor lighting standards and fixtures for illumination of premises shall be so designed and installed that direct rays are not toward or parallel with a public street or highway or directed toward any residential uses.
7. Noise impact on neighboring residential areas shall be mitigated by shielding and locating mechanical equipment away from residences. Selecting mechanical equipment designed to generate less noise and construction of adequate noise barrier walls along neighboring residential areas.
8. The applicant shall submit a revised site plan showing off-street parking and loading facilities as required in RRMC Chapter 17.70.
9. The applicant shall submit a Level 3 Water Management Plan and Level 3 Erosion control Plan to comply with RRMC Chapter 17.90 storm and surface water management and RRMC Chapter 17.95 Erosion Prevention and Sediment Control.
12. This Conditional Use Permit is contingent on the proposed building remaining consistent with the declared use and associated with the existing business on the parcel. Any change of use shall require a new Conditional Use Permit.

13. Open storage of materials attendant to a permitted use or conditional use shall be permitted only within a paved area surrounded or screened by an approved solid wall or an approved site screening fence six-feet in height; provided, that no materials or equipment, except vehicles, shall be stored to a height greater than that of the wall or fence.

Public Works Director Michael Bollweg said he was not aware of any progress on the other conditions that Mr. Nolan addressed. As far as he was aware all of those items were still a issue.

City Councilor Barb Hilty asked for clarification of a photo in her packet as to the direction of the building.

City Administrator Mark Reagles indicated that she was looking at the east side of the building between the ice plant and the mobile home park.

City Councilor Barb Gregory said it was her understanding that the machinery that was causing the noise was not to be placed along the east wall but to be placed along the north wall and obviously that did not happen.

Public Works Director Michael Bollweg said that Mrs. Gregory was correct. He also noted that during this process it had been an extremely difficult time for the city by being limited with staff and staff time.

Mayor Wayne Stuart opened up the time to hear comments from the public.

Lead Attorney Ben Freudenberg representing HRP/LLC and Dale Hurst and the Attorney who filed the appeal, he introduced Attorney Garrett West who would be presenting testimony along with Civil Engineer Mark Cross, Building and Foundation Engineer Shane Earp, the Acoustical Engineer Kerri Standlee and, also on the phone was Martin Schott of Schott & Associates who did the original riparian management plan. Mr. Freudenberg commented that there were so many witnesses because it was an extremely urgent matter to his client in regard to the huge investment he made in the ice plant and the fact that there were folks in the community that employed there. He said they had heard at the Planning Commission meeting what they had heard before but also things they had never heard before, in particular, they heard there was vibration from the operation of the plant. He also wanted everyone to know that they took the matter very seriously and to allow the City Council access to the experts to ask them questions and get all the information to make a decision. The ice plant generated a lot of money for city in terms of building fees and system development charges and there was a multi million investment in the project. Mr. Freudenberg then handed out a binder that consisted of a witness list, photos, reports, order forms, permits, cost for building, modification for land use approval and a list of immediate noise mitigation measures.

Martin Schott of Schott & Associates said they were contacted to do a survey of the riparian area and what they found initially was blackberries, a significant size tree and some shrubbery within the riparian area and from the assessment they developed a mitigation plan to improve the quality of mitigation area by planting. He came to the site in August 2021 to check on the plantings that had been done and overall found them to be doing well and established with a high survivorship of the trees and shrubs planted everything planted. He mentioned that there was still a significant blackberry component that needed to be controlled. They proposed 5-Madrone trees to be planted but were substituted with 3-Douglas Firs and a Cedar that was doing well. Due to the drought conditions 2-trees were lost over the summer. He said the blackberries needed to be controlled by hand and paint their stumps without effecting the other trees and shrubs. Also, recommended that wheat grass and other grasses be planted to help with the erosion. Mr. Schott left the meeting at 7:03 p.m.

Mr. Freudenberg commented that Mr. Hurst was moving forward with Mr. Schott's recommendations by employing the Ground Guys, a local landscaping company.

Civil Engineer Marc Cross explained the submittal process of when things were submitted and when work was being done. The original Conditional Use Permit was submitted in September or October of 2016, approved by the City in November 2016. Between November 2016 and November 2017 site plans had been filed with the city trying to figure out what was going to be done with the original site plan then engineered drawings for the ice plant were submitted in November of 2018 which began the review process of the city staff and was granted approval of the engineering plans in March and April 2019. Construction began shortly thereafter in the Spring of 2019 and received occupancy permit in February of 2020. So the ice plant had been in operation since February of 2020. The first thing they noticed was the inability for trucks to turn around at the end of the drive isle and they approached the city about paving the turnaround but since the property was not zoned commercial and not part of the original use permit they would need to submit an application for residential use that would complete that half of the site and be able to pave that part of the turnaround. In the mean time they were able to get a temporary pond constructed with the intent to put the soil and pond underground of the future development of residential units. In late 2020 and early 2021 they began the submittal process for the residential apartment project by submitting the site plan in March of 2021 and were city approved April 27, 2021. The approval did not mean they could construct improvements so basically between April 2021 and July 2021 he was working on the engineering drawings for the development that also included the bearing of the underground storm water facility and submitted engineering drawings on July 27, 2021 along with the storm water report and he was currently waiting to hear back from the city about his drawings and report submitted in July 2021. Before they could have approval to go ahead and construct the truck turn around. He said he thought Mr. Hurst would pave the turn around tomorrow if granted the approval but they were trying to go through the steps that

were outlined to them by the city to be able to pave and have the storm water mitigation done correctly.

Public Works Director Michael Bollweg asked Mr. Cross if he was aware that when the plans were submitted to the City the trucks were not going to be that large and almost immediately after the ice plant started business the lot was extended and gravel was put down and used as a maneuvering area which lost a lot of confidence with the whole system and once the plant started up it went into a totally different direction. He asked Mr. Cross why that happened.

Mr. Cross said the turn around movement on the site plan was a straight backing in and a straight pulling out and it hadn't been feasible, they were driving on dirt initially trying to get turned around. What he could show on paper and what they do in the field were two different things with truck drivers. To try to control the dust by putting down the rock shortly after.

Public Works Director Michael Bollweg said that Mr. Hurst did try to correct one of the original complaints as far as mitigating the dust. Though it was hard to understand when there was actual dialog and language about the truck size and maneuvering on that lot as soon it hit the point of operation it changed and became something that was not represented. And as far as the pond, even though it had been put in temporarily had been extremely poorly maintained. The riparian area and the pond seemed to take so long for anyone to take action on. He appreciated that an expert came in to assess the issue but he came in after the fact and we were looking at revoking the conditional use permit in order to get a reply. The City was just asking that what was would be done got done.

City Administrator Mark Reagles commented that not all of the City Councilors had been involved in the ice plant project from the beginning and told Mr. Cross he appreciated his comments but felt that he was saying that the City was partially responsible for the hold up of being able to move forward with paving and realized it may not have been his intent but wanted to make sure that the City Councilors were not felling the same thing. The piece of property regarding the maneuvering of vehicles that the Planning Commission approved for the new development was never intended to be used as part of the ice plant nor was it suppose to have been touched so a lot of problems now were caused from an over zealous contractor who got out there with a bull dozer on a piece of property that should not had been worked on at all and started tearing things up. He wanted to make sure that the City Council saw the perspective of staff as they went through the project and tried to work with Mr. Hurst to get things accomplished as they went along because of the mistakes that were made early on had put the City behind the eight ball with a piece of property that was not even part of the project and should never had been touched but because it was it became incorporated into the project itself and when the vehicles started using it to store material and storing and maneuvering their trucks just exasperated the process.

Mr. Cross said he was trying to show how much time the process takes. Between 2016 and 2018 parts of the process was submitting a conceptual site plan that been in general compliance with the conditional use permit which was really just a sketch at that time and some going back and forth about the building which had been significantly smaller than proposed on the first site plan.

City Administrator Mark Reagles commented that he remembered it as the building actually increased in size because Mr. Hurst had found a building that had already been built and he came to City and asked to use that building which would be larger, with the front and back of the building to the north and the sides was oriented east and west.

Mr. Cross said that when that building was proposed they were told they could only increase the size of the building by ten-percent resulting in one full bay of the building being taken off. They did try to mitigate the dust in a temporary manner, they got permission to by apply non dusty gravel for truck maneuvering.

Public Works Director Mike Bollweg commented that he did appreciate that was done but once again it was a use that was not permitted and then the neighbors complain he had a responsibility to the citizens to address any issues and it did make it better.

Shane Earp said he was responsible for the foundation system and the interior improvements but not the metal building and he was there to address any vibrations migrating from the building. He did not do any measurements or tests to meter any possible vibrations but felt it was unlikely that any of the equipment inside the building was causing vibration to migrate to neighboring property. There was too much foundation, too much concrete and the units that actually did vibrate were on vibration isolating foundations so it would not happen.

City Councilor Barb Gregory asked if the vibration was caused by the building and the machinery in it or by the semi trucks that were sitting idling and maneuvering.

Mr. Earp said he could not answer that, in likely-hood was from inside the building but pretty limited.

City Councilor Barb Hilty asked was the vibration isolating foundation.

Mr. Earp said it has its own footings inside the building independent of the rest of the foundation, so it moves but it doesn't move the rest of the foundation. The foundation was so large it would take an enormous amount of movement to create vibration to migrate.

Public Works Director Michael Bollweg said he actually did go to the site and being familiar with large construction projects with heavy machinery and isolated

equipment but he believed it was simply the size of the trucks. Standing in the parking lot on the asphalt, you feel the traffic moving in and out. He commented that he had not been aware of the nuisance until the last meeting he attended where people had talked about the vibration and it was his opinion that it was not as much his issue but a transportation issue.

Kerrie Standlee with DSA Acoustical Engineering, Inc., a Professional Acoustical Engineer said he had been contacted in late August about the ice plant to help with their issues. He came down to Rogue River to do measurements of equipment around the property to get reference sound pressure levels for doing modeling. They elected to do modeling because of all the properties around the site. He used a model program called sound plan, putting in the reference levels of all the sources, identified their location and the program gave a prediction of what the levels would be which could be found in his report. Based on the fact that Rogue River was right next to the freeway, he did research on traffic through ODOT and found that during the late night hours traffic drops off substantially during the 1:00 a.m. and 2:00 a.m. hours but found that during that time the percentage of trucks increased considerably. He noted that the percentage of trucks during the day was about twenty-percent and at night jumped up to about forty-five-percent. So he expected they would have to recognize the maximum DEQ limits maximum allowable noise limits. Referring to his report, he took measurements on the site at different points to establish what would be the criteria because the second part of the regulation for new sources located on previously unused sites, which this happened to fall, if the new source creates noise that increases the ambient by more than 10dB that would be in accordance, except if that 10dB added to the ambient exceeds the maximum allowable rule and that was the case. The ambient sound during some of the hours he measured between the hours of 11:00 p.m. and 4:00 a.m. the levels were actually close the maximum allowable for industrial noise sources because of the truck traffic. With those results he said the noise radiating from the facility exceeded the DEQ limits. He found that mitigation measures were needed to bring the plant into compliance so they went about the process of identifying mitigation measures that could be used and one of major sources they found was from the south side of the building. On the southeast side of the building there were two cooling towers and one of the towers intake air for the fan was opened toward the east and he understood that they did that to separate the intakes sucking air from both directions, but, by doing that the intake fans were the loudest part of the source even with the twelve foot high barrier it still exceeded the limit. They found in order to come into compliance they needed to rotate the east tower so the opening was to the east and there was enough room for that to occur, then put a taller curtain than they currently had in place and go to twenty foot curtains and extend to the west that will take care of any reflections off of the building. In addition of the cooling towers on the southeast corner there were two condensing units that exceeded the limits even without the noise from the towers and they came up with three options to consider was 1) to enclose them, 2) to move them into the area where the cooling towers were with the twenty foot barriers or 3) move them

to the roof and it was Mr. Hurst chose to move them to the roof, separating them to the north and south walls with a barrier in front of the large unit to block sound radiating to the north and east. Other sources of concern were the four condensing units on the north end of the building which did not run simultaneously so they modeled them in a way that would be reasonable with two units running simultaneously for thirty minutes accumulatively of the hour, he then explained to the City Council the ambient hourly noise levels adding that the DEQ maximum allowable noise level would be more restrictive than the ambient noise degradation rule so they put in sound barriers on the east and the northeast to protect the residents and there was no accedence to the west across the creek.

City Administrator Mark Reagles asked why the ambient noise measurements were taken from the west instead of the east where the residences were located.

Mr. Standlee said the building itself blocked the ambient sound to the residences and the major source of sound was from the freeway and he could distinctively hear sound from the north side of the building of freeway noise but it was less than what was less than from the west side. He wanted to test from the center of the property which should had been done before the building was built back in 2016 to establish the ambient at that time relative to those residences. Those residences were exposed to the sounds coming from the west side of the building now ther'ye not so it would not be representative of the conditions at the time the building was built.

Public Works Director Michael Bollweg asked Mr. Standlee how long he had been doing such studies.

Mr. Standlee replied since 1975.

City Administrator Mark Reagles asked Mr. Standlee if another location similar to this came to mind where issues had come up and been determined by a study that they had been able to resolve the sound issues.

Mr. Standlee said he was involved with the City of Tangent as a third party reviewer with a steel fabrication plant that was located next to a mobile home park and they had a big problem prior to mitigation with steel beams being dropped, scraping on the ground and steel on steel issues. He added that it had been brought into compliance by installing a twelve foot berm for part of the property and did mitigation to some of the equipment.

City Administrator Mark Reagles referenced one of Mr. Standlee diagram maps and said there had been several complaints of excessive noise coming out of the louvered area and Mr. Hurst had previously shown pictures of some sort of sound proofing over the top of the louvers but it wasn't working or someone was moving the sound proofing at night because residents were hearing ice falling or what sounded like breaking glass.

Mr. Standlee said there was a louver on the east side of the building that was covered with a blanket used to make a barrier but he had been told that the blanket had to be moved away a little bit to let the air flow. He said he had recommended that the air vent be moved to the south wall as far as possible and behind the twenty foot high barrier. That would be further from the residents. And, if that was not adequate there was they had the ability to design a duct inside that would allow the air to go through but no sound would go out.

Public Works Director Mike Bollweg said he appreciated that Mr. Standlee had been doing his work for a quite a while but part of the situation was that the people had been exposed to this condition for three and a half years to those noise levels, what ever those levels were, but exceeded what is comfortable and then the people with health issues comes into play with it. He stated that he was extremely sensitive to noise and asked what would be the health impact of being exposed to that sort of noise for three and a half years.

Mr. Standlee said that prior to the curtain going up there was one residence that was probably getting very high levels. High enough that it would be difficult to have a conversation outside six feet apart. He said that once it was all mitigated to the DEQ limits that it would be a very acceptable situation, those limits were developed keeping in mind health as they selected the limits by regulation in 1975 to protect the public health.

Public Works Director Mike Bollweg asked Mr. Standlee how long would such a process take place, referring the City Council that they and staff had been dealing with the issue for a very long amount of time.

Mr. Standlee responded that he could not speak to all of it however he could let him know that he stopped by the project that day and contacted Mr. Hurst and recommended that he do a temporary partial enclosure around the two units on the east side of the building until they could be moved to the roof. He said Mr. Hurst had brought in a maintenance person and installation was installed facing the units. He said he stopped by the warehouse prior to attending the meeting and found a 10% for 15% reduction from the units though it would not be permanent since the blankets could not be exposed to increment weather.

Public Works Director Mike Bollweg said that the air-conditioning units were not suppose to be placed where they are on the east side of the back of the building.

City Administrator Mark Reagles said that all the units were suppose to be on the north end of the building.

Public Works Director Mike Bollweg asked Mr. Standlee if he did any sound measurements of traffic during the day since he had mentioned that there were no noise issue going to the west because most of the complaints were coming from

across the creek and were related to the truck traffic.

Mr. Standlee replied that he did not do any measurements from the trucks since they were not there when he was doing his measurements and he was focusing on the equipment that was stationary. He asked staff where the vibration complaints came from.

City Administrator Mark Reagles said the complaints were heard from someone from the mobile home park when hearing public comments at the Planning Commission hearing.

Mr. Standlee said he wouldn't be surprised that it had been a result of the cooling towers and the acoustics causing the lightweight structure to have vibration.

Public Work Director Mike Bollweg asked if they were mobile.

Mr. Standlee said the mitigation should address that, talking about two pounds per square foot of surface weight of material sewn in that would go in there. Currently they had one pound per square foot.

Attorney Ben Freudenberg asked Mr. Standlee to highlight all the mitigation measures he put in his report because they were all of what Mr. Hurst would be doing to bring it up to DEQ requirements.

Mr. Standlee reviewed his list which was listed as doing most quickly:

1. Rotate the east cooling tower one-hundred-eighty degrees so the fan intake air opening was facing west.
2. Replace the twelve-foot high mass loaded vinyl curtain barrier on the east side with a twenty-foot curtain and constructed with two pound per square foot vinyl and extend the curtain around the south side of cooling tower approximately fifty feet.
3. Move the condensing unit outside the east side of the building that serves the Bin Room to the roof approximately fifty-feet north of the south wall and ten-feet west of the east wall.
4. Move the condensing unit outside the east side of the building that serves the Processing Room to the roof approximately one-hundred-fifty feet of the south wall of the building and approximately fifteen-feet of the east wall, and install a three foot high L-shaped wall approximately three- feet from the unit to barriers sound radiating from the north and east sides of the building.
5. Use the twelve-foot high mass loaded vinyl curtain located on the east side of the east cooling tower and place it to the east and north side of the condensing units of the larger condensing unit located outside the north end of the plant near the northwest corner, and place the curtain material along the chain link fence around the units.

6. Install eight-foot long two inch thick fiberglass filled blankets along the outside of the north wall of the building in the area where four large condensing units are located to reduce sound reflected from the wall to residents north of the building.
7. Remove air louver on the east wall of the compressor room and place it in the south wall as far west as possible located behind the twenty foot curtain installed around the cooling towers and fill in the opening with metal siding and fiberglass insulation.
8. Install an eight-foot high, three sided open top enclosure around the six small condensing units located on the ground east side using the same curtain material installed on the east side of the east cooling tower.
9. Install five-eighths-inch gypsum board from the top of the CMU to the roof on the east wall of the compressor room.
10. Install five-eighths-inch gypsum board from the top of the CMU to the roof on the eastern twenty-feet of the south wall of the compressor room.

Mr. Standlee said that once those steps were taken they would be in compliance.

City Councilor Pam VanArsdale requested a five-minute recess which was granted from 7:50 p.m. to 7:56 p.m.

Attorney Ben Freudenberg said in regards to Mr. Standlee's mitigation items Mr. Hurst was committed to doing all those things and had implemented many of the items but with manufacturing delays and deliveries so the thing that would not be heard was promises since they didn't want be thought of poorly. He said the first mitigation was to rotate the east cooling tower one-hundred-eighty degrees, BAC units and contacted the supplier and installed them, they are on their work list and told them to order the pipe and they gave them a time frame but hesitate to give it to the City because everything slips but they're on the order list. They ordered and installed the twenty-foot high curtains that and they did make a difference but not as much as they hoped. So they ordered twenty-footers to replace the others in that location and the twelve-footers would be put on the north end of the building as Mr. Standlee agreed. They contacted Built Right Fencing to put up a fence to do the extensions because the twenty-footers needed higher frame work to hang them. The two Bohn units that was to go onto the roof were on the list and Caveman Heating and Air had been contacted and the roof needed to be strengthened before their installation. Caveman would be moving the louver when moving the units to the roof. Some small units will remain on the ground behind the building on the east side with an eight-foot high inclosure around them. Arrangements had been with a contractor to install the gypsum board. Unfortunately if the material and man labor was not available, the work could not get done by itself but once all the work is done they will be fully compliant day and night. In the meantime Mr. Standlee had suggested that they could operate during the day hours which according to DEQ were 7:00 a.m. to 10:00 p.m.

Attorney Ben Freudenberg then went on to address their immediate noise mitigation measures as listed:

1. Signage for trucks to turn off lights, not idle engines and not run reefer units had been installed and Mr. Hurst has instructed staff to police it.
2. Sound blankets on east side of equipment enclosure at sound end had been installed, it helped but not enough.
3. Sound blankets inside building over the louvers had been installed, helped but not enough so the solution was to move it to the south wall.
4. Limit operation of ice plant equipment to 7:00 a.m. to 10:00 p.m. Monday through Saturday with shut down on Sunday though delivery trucks may still come and go. That maybe workers running a forklift inside but the ice plant machinery would not be running. He then commented that there would be no trucks after 9:00 p.m. and that the machines cycled but they were working with the manufacturer to set the cycles to end at 10:00 p.m.
5. Immediately build temporary structure around Bohn units at south east corner to remain until Bohn units moved to roof per Mr. Standlee's report had been done temporarily and reduce the noise.
6. Reinforce temporary plywood shield at northwest corner of building and insulate, to remain in place until the fiberglass blankets were installed.

Attorney Ben Freudenberg said that the purpose of their request was to overrule the decision of the Planning Commission because of their expert's opinions of what to do to address all ten of Mr. Standlee's militations to be in compliance and they would like to keep operating from 7:00 a.m. to 10:00 p.m. and implement the measures as addressed. He said that the City had gained from the fact that the plant was built and operates referencing the building permit application that Mr. Hurst purchased in the amount of \$192,356.81 for permits and system development charges which were a huge investment and the thought of being shut down and not being able to recoup that investment was not something they could accept financially. He then addressed Mr. Hurst's financial trial balance which showed that Mr. Hurst had invested at least \$2.5 million into the plant and that should be considered weighing when making a decision. He said that the land use application had a 2016 date on it but the building wasn't under construction until 2019 and in 2018 there was an adjustment to the location of the building which moved to the east. So the building was enlarged and what happened was they received permission to build the larger building but it actually shrunk from what they got permission for because of various concerns stating his point was that it had been before the City and it wasn't something that had been snuck in over night. He also noted that the occupancy permit had been dated in 2020.

Mr. Freudenberg brought up that Mr. Bollweg had mentioned that they had taken care of the weeds and they did and he referred to his photographs in his packet. He said the lighting issue had been resolved by installing shrouds over the lights in the back of the building which was on the east side of the building and west of the mobile homes which had been done following the Planning Commission meeting

in April 2021 so the lights did not shine onto the neighbors. He again said that their request was that the City Council overrule the Planning Commission and allowed them to continue to operate under their temporary mitigation measures, one through ten, as quickly as labor and materials would let them.

City Administrator Mark Reagles referred to the ten mitigation measures that had been presented by Mr. Standlee which did not have a time frame but the neighbors needed to know how much longer was their lives' going to be turned upside down. Mr. Hurst would be changing the hours of operation which was something that the City would have liked to have happened a while ago since they had that discussion with the folks who lived over there. His concern was that if it took too long for the mitigation items to be addressed that they would be into the winter months when the plant wouldn't be running as much he was concerned there would be a big time frame where if they did get some of the work done but there would be no way of knowing if things were mitigated because of no more noise being made.

Mr. Standlee commented that the City could put conditions on Mr. Hurst.

Mr. Reagles said, yes, the City could put conditions on the project but he didn't want the job to be sitting there for a year and think that things were being done but in reality it wasn't and the neighbors had to live another year in misery.

Mr. Standlee said that based on what he had been hearing Mr. Hurst and the ordering of materials the thing that would take the longest time was turning around the cooling tower because they had to bring in the people who do the work and it seemed they were a ways out on the list but the other things were going to be quicker. What they looked at was when the curtain went in with the tower not turned they could be in compliance with the daytime standard so it was proposed the interim step of daytime hours. However, until the curtains went in they weren't necessarily going to meet that totally but with the installation recently done two of the sources had put them in compliance with the nighttime standards given the reduction received. But that left the cooling towers still in the same location with a twelve foot high curtain instead of the twenty foot high. It was his understanding that the curtains would be ready for shipping by the end of the month. Mr. Hurst was doing everything he could to reduce the noise for the benefit of the residents.

Garrett West, Attorney with the O'Connor Law Firm specialized in property rights and land use and filed appeals with LUBA. Mr. West presented a document dated September 7, 2021, and stated that his presentation focused on the legal aspects for the decision of the City Council along with constitutional implications. He knew there was a lot of concern with the compliance of noise, lights and things of that nature. One of the things he realized when doing the record from the Planning Commission was that these types of issues were dealt with through code enforcement actions and you would go through the police department who would go through a lengthy procedure. In Rogue River's municipal code chapter 8 which

he stated was attached to his submission gave a process for how to insure that a business owner was complying with the ordinance, starting with official notices, warnings, notices placed on the property, a code enforcement hearing and ultimate the city could impose fines on the violator and if the conditions continued the city could up the fines and if that didn't work the city could go to Circuit Court and file an injunction. It was unusual to see a city go around that and not address it that way and skip straight to the revocation of the conditional use permit. He found it unusual because once the conditional use permit was issued the property owner invests substantial sums of money into the property the conditional use permit worked primarily as a permit the city could take away and in time to actual property rights of the property owner. In this case Mr. Hurst had a legal property interest not only in the building itself but also with the operation. If the conditional use permit was completely revoked which was the decision the Planning Commission made the property itself became illegal and worthless, it would a warehouse on the property that could not legally exist, it could not operate because the property was zoned for multi-family use. If the city proceeded with affirm the Planning Commission's decision the city is condemning the property and revoking all property rights that the owner and several businesses have. That's why cities go through code enforcement procedures to make sure everything is being maintained as it should be and not jumping straight to condemnation proceeding but his main concern was that if the City Council affirms the Planning Commission and pulls the conditional permit the property becomes instantly worthless. It would cost more to demolish the structure than what would be received in liquidation of the property and several constitutional problems arise from that. He asked that the City Council take time to analyze the situation. He expressed his opinion that the Planning Commissions decision only being a page and a half long and that each item was not addressed with a legal opinion that it would not hold up in the Land Use Board of Appeals or the Court of Appeals would it be able to hold up to legal scrutiny and encouraged the City Council to make sure their decision held substantial legal weight.

City Administrator Mark Reagles commented that he begged to differ with Mr. West's comments. There had been a lot of contact with Mr. Hurst over the issues, there were letters written by staff to get the issues addressed. It wasn't like the City just jumped the gun, they tried to get him to comply and work with the City and there was no progress. Also the comment that the warehouse could not exist because the property was zoned multi family was incorrect, his property was zoned commercial where the warehouse was located, the multi family property was adjacent to the warehouse.

Mr. West responded that the map on the City website currently indicated that it was zoned residential.

City Administrator Mark Reagles said that Mr. Hurst applied to have the property rezoned to commercial.

Mr. West said in that case he didn't know if a warehouse could exist.

City Administrator Mark Reagles said that was the reason why he rezoned the lot to commercial so he could build the warehouse.

Mr. West also commented that he wasn't implying that there has not been communication with the City staff normally in code enforcement procedures there would be a little more formality than simply a letter. Usually it's a formal document that has a bit of gravity to it that make sure of the gravity. Not to say that there wasn't communication but some mis-communication and mis-understandings.

City Councilor Barb Gregory requested that the City Attorney to respond to the recent comments.

City Attorney Michael Franell stated that he disagreed with Mr. West in some regards 1) when the conditional use permit was applied for Mr. Hurst understood that he had conditions that he needed to comply with in order to be able to maintain that conditional use permit, there had been at least two notices sent to him over the past year that he was in non compliance with the conditional use permit before it was brought back before the Planning Commission for revocation and believed that he had his notice and opportunity before the hearing, 2) even though the proposed mitigation measures that Mr. Hurst had did not comply with the conditions that were in the original conditional use permit, for instance it indicates that in order to be consistent with the applicants application that he would operate Monday through Friday from 7:00 a.m. to 3:00 p.m. and yet now they're proposing from 7:00 am to 10:00 p.m. as a mitigation measure, that doesn't even comply with the original conditional use permit. He felt that there were some problems with Mr. West's assessment of where things were at.

Mr. West responded that he respectfully disagreed commenting that he thought Mr. Franell was referring to condition number 1 in which it stated the hours of delivery would be Monday through Friday from 7:00 a.m. to approximately 3:00 p.m. was restricted to deliveries not a restriction on the warehouse being open.

Mr. Franell said they're still not meeting the permit because they were doing delivery outside of those hours and in addition it was his understanding that he was planning on using little bob tail trucks to accomplish the deliveries and those have turned into regular semi trucks.

Mr. West addressed the truck issue by stating that to preserve a challenge for appeal none of the conditions that were in the conditional use permit restricted the size of trucks. He said he thought his client would be willing to enter into a legally binding agreement to address those concerns but just from the conditional use permit itself it didn't talk about trucks.

City Councilor Pam VanArsdale asked if either of the Attorneys had read the Letter of Intent which was Item No. 1 to operate consistently with the applicants application, findings of fact and letter of intent. Mr. Hurst's letter of intent said that he was planning to erect a new building for the purpose of supplying products and ice to the stores. The stores were all listed on the bottom of his letter. The nature of the daily operation would include food preparation and ice production and packaging and loading the delivery vehicles with said products for daily deliveries to the stores. That warehouse has become an ice plant and everyone speaking tonight has repeatedly been calling it an ice plant, it's not a warehouse, it's an ice plant to supply ice throughout the State of Oregon not his stores. The letter of intent was not what was currently going on there. If someone says this is what they're going to do and then they do a totally different thing where does the City fall in its rights. She asked if Mr. Hurst would like to respond to how much of the ice was going to his stores and how much was going to the State of Oregon.

Attorney Garrett West said he didn't have a comment he didn't have any actual knowledge, I just don't know what to say.

Public Works Director Michael Bollweg said he too was not a lawyer but had been in municipal government for more than two decades and felt this was a nuisance issue, it wasn't just a little thing, in a small town it's an issue for the City Administrator thing, the Public Works Directors' thing, every City Councilor's thing and everyone else's issue in this town. He did not feel it was a code issue, if you agree to terms prior to the development of a property and now all of a sudden it becomes a code issue you haven't followed that what was agreed to it's become a completely different thing. There were some code violations with weeds but the City was also dealing with an initial agreement that was not suppose to impact the quality of life in any negative way to the extent it has to all the residents in the area. What was really the issue here was the constitutional rights of the citizens and how Mr. Hurst continued to go on with what he was doing in spite of the fact the quality of life for them had been diminished over the time of a year to eighteen months. It's been too long and why should they have to take it another day.

Mr. West said one of his concerns was the vagueness of the conditions of approval that were in the initial order since he felt that the City staff was reading it one way and maybe thinking it said something else and he was reading it and it was not literally what it said. With violations of the City code to him if there were a dust issue that was a quick and easy code enforcement procedure to force the property owner to take care of it. The same with noise the conditional use permit did not say how much noise a warehouse like this can have, it just says the machinery that's less noisy which was really broad and vague term and how do you insure compliance but the City was using it's own code and then looking towards the State Statutes on what the noise was then go and enforce your code enforcement. He said he had not been able to know both sides of the conversations but he was looking at it by reading the conditional use permit and they weren't required to be completely silent.

Mr. Bollweg said as the Public Works Director prior to this project taking place in conversations with the residence he took personal responsibility to say the City has adequate things in our conditions that these things wouldn't occur. Some people with medical issues don't have the tolerance to deal with noise and vibrations, but we gave them assurance that this wouldn't occur both based on the comments that Councilor VanArsdale was talking about and the questions that were asked. Mr. Hurst had done nothing about he wasn't going to continue to use the other piece of his property to park or maneuver his vehicles, creating dust issue again or willing to do anything to protect the residents who were really being tortured from living right next to this during all this time. It is a persistent on going issue that was effecting the quality of life who live next to this development.

Susan Kirby who lived in the mobile home park next to the development said what she had heard during this meeting had just jolted her. Her house was the first house next to Mr. Hurst's building with neighbors on each side of her. Her husband was still working and she was paralyzed with multiple sclerosis and they had to move to their living room to get some kind of quality sleep was when it got bad. At one point when they were constructing the building they had a light higher than a car dealership that beamed down in her bedroom. They are not able to have a quality of life due to the noise, not able to have family to their home because they cannot carry on a conversation with each other. And, then there were the neighbors who agreed with her about the conditions but they won't stand behind her when it came to attending the meeting and making their comments heard. She said to some it may not mean much but when you purchase a home in a fifty-plus mobile home park and you can not even socialize with friends or family and your stuck in the house twenty-four-seven for the last three years trying to cope. And now her and her husband have to see doctors for hearing issues because they have to yell at each other to be heard. They never had to yell to be heard before either inside or outside of their home. She wondered how Mr. Hurst would like it if property adjacent to his were to be rezoned and strawberry pies were being made all day and all night, by his representation during the meeting she didn't think he would like it. She said during the Planning Commission meetings Mr. Hurst would attend and agree to meet all the conditions set but when you call the City to complain he would respond that they were unaware of it. It's not the City's fault, Mr. Hurst had just been stubborn and arrogant about following what had been written, what was code for the safety of the people around the plant on a daily basis. It may not be fair to close down the plant but how else were you going to get Mr. Hurst to comply with the rules and regulations that he agreed and signed to do so that he wouldn't be bothering the other people in the community or given a second thought of others. She thanked the City Council and Staff for cooperation with her during this situation, hoping that it could come to an end so they didn't have to deal with it for another three years.

Daniel Burton who also lived in the mobile home park next to the development handed out a ten page document consisting of items from previous meetings

regarding ordinances and a letter from Rogue River Fire Marshal Mike Gavlik. He commented that he did not feel Mrs. Kirby's opinion was extreme because he felt that Mr. Hurst should be shut down, let him take the loose, disassemble the building and move it somewhere else that was industrially zoned. One of the items he included in his packet was the letter from the Fire Marshal expressing grave concern because he did not have the staff to evacuate the area in case of fire at the plant. Mr. Burton didn't feel the City could produce an adequate amount of water to fight a sizeable fire that could occur at the plant. In the past year there had been recent fire and thankfully no one had been injured or lost their lives but it would be a nightmare if there were a fire at that plant. He commented that he felt the City had set itself up for incredible litigation, lawsuits and liability from the citizens that live in the community. He said that it appeared to him that Fire Marshal Gavlik's letter had been ignored and asked the Mayor and City Councilors to read his letters if they hadn't already. He found Mr. Gavlik to be a very credible man, loves this community and more credible than any of the expert witnesses that Mr. Hurst had brought forth tonight. Mr. Burton asked if any of the City Councilors were on the City Council when the property was rezoned and if any of them supported the rezoning and the building of the ice plant.

City Councilor Pam VanArsdale said that the letter of intent that they had was for a warehouse which would have been consistent for commercial zoning in conjunction with the existing business and therefore they saw no reason not to allow it to be rezoned commercial for that reason. The City Council had no idea Mr. Hurst was building an ice plant, an ice factory, something to supply the State of Oregon. We didn't know it, as Mr. Burton stated earlier it's now a use more conducive for industrial.

Mr. Burton said he moved here from the bay area to live in peace but he was blown away with the whole thing. The business was purely an industrial operation that posed significant dangers to this community, where there were no safety and emergency resources to deal with it if something was to happen. After seeing the Double R Pub burn down and his neighbor's house burnt down and then Fielder Creek and Tin Pan Mountain, only God knows what would happen. He said that Mr. Hurst has shown that he was not doing annual maintenance on his other business and anything else that nobody knows about. The Fire Marshal said he could not evacuate people and they had no resources to fight an ammonia fire. He pleaded with the City Council to shut down the business, he had nothing against Mr. Hurst, he was very successful, he didn't care how much it cost him to build this plant, he could disassemble the plant and relocate it to an industrial zone where it would be appropriate in a city where they have a fire department capable of dealing with that type of hazard. Mr. Burton asked the City Council to go with the recommendation of the Planning Commission, revoke his permit because there were some issues that were not possible for Mr. Hurst to mitigate that had been discussed such as life, safety and health that the Fire Marshal had great concerns with. And as for as the building be condemned and worthless was a crock, he could very easily build senior

housing or apartment complexes. Mr. Hurst had great attorneys, he could write it off as a business loss, move to an industrially zoned area or building residential and make millions of dollars. He said he hated injustices and this was just wrong.

City Councilor Barb Hilty asked the Public Works Director if Mr. Gavliks' comment that water flow requirements needed to fight a fire at this location cannot be met by the City of Rogue River's water distribution system was a true statement.

Public Works Director Michael Bollweg said he would need to review the records and issue with Mr. Gavlik regarding type and size of water flow and get the engineers involved as a point of discussion. At the time of the letter it may not have been true at the time when reviewing the plans and what actually went in could very well add new issues.

City Administrator Mark Reagles commented that they would have to go back and review the records to see what the Fire Marshal was recommending at the time of application.

Public Works Director Michael Bollweg again commented that he would have to go back and consider the hydrant size.

City Councilor Barb Hilty asked why Mr. Hurst waited to do all this time until he was forced to do it before doing something about all these issues.

Attorney Ben Freudenberg said that COVID did have an effect on ordering and deliveries. The blankets were on back order and until the items were in the yard, yes in better circumstances could have been done sooner, should have been done sooner. There were just delays everywhere but now they were pushing everybody as hard as they could. And as Mr. Standlee said if they did all the measures he addressed it would meet DEQ standards day and night.

City Councilor Pam VanArsdale commented that Mr. Standlee had not been contacted until after the Planning Commission made their decision.

Attorney Ben Freudenberg said that was true, absolutely. He said they were not there to hide anything, but it was what it was.

City Councilor Barb Hilty asked if they decided not to revoke the conditional use permit how would they be assured that they wouldn't be dealing with it again in six months. Was there a guarantee they wouldn't be back dealing with this again.

Attorney Freudenberg said they would promise to contact the City each time an item on Mr. Standlee's list had been completed they would send a letter to the City stating that it had been accomplished.

Mr. Dale Hurst commented that he had contacted everybody regarding all the ten items asking what and how fast can it be done and nobody would commit to a time, would be put on a list adding that he could only go as fast as he could go. He did not want to promise they would have it done in six weeks and not have the trucks show up and people not be able to do things. He said he had two-hundred-eighty-five employees they don't show up to work, understanding where they were all at. The shelves in his stores were empty because there was nobody to make the product, ship the product, everything was just delayed. He had never seen it like this and best he could do was just to say he promised as fast as he could get the items done he would.

Attorney Ben Freudenberg again said the City would receive a report when completed.

City Councilor Pam VanArsdale commented that was just the ten items dealing with noise, it didn't address the eight other things. And she wanted to know how they addressed the letter of intent which said Mr. Hurst would be using his own trucks. She asked if all the semi trucks were owned by Mr. Hurst, all the trucks that were currently coming and going from the ice plant was his own as stated in the letter of intent.

Attorney Ben Freudenberg stated that it was clearly indicated to be an ice plant.

City Councilor Pam VanArsdale again commented she was referring to the letter of intent of what the building was going to be used for and what it was now.

Attorney Ben Freudenberg again stated that is was always going to be an ice plant and that was what it was today.

City Councilor Pam VanArsdale said that was not what that letter said.

Attorney Ben Freudenberg said it was going to be an ice plant.

City Councilor Pam VanArsdale said for production of his stores.

Attorney Ben Freudenberg said for the stores.

City Councilor Pam VanArsdale said its semantics now. They were being told that they were going to mitigate one thing out of seven and just the noise issue was ten items.

Attorney Ben Freudenberg commented that Mr. Cross submitted paperwork to pave the area for truck maneuvering. It was his understanding that the City contracted with an outside engineer, in their packet was the order form for the storm basin that had to go in and they were on the list for CPI to do the paving.

City Councilor Jack Bird commented that he saw there was a credibility issue of major size. He personally asked Mr. Hurst when on the Planning Commission if he was willing to work with the City moving forward and his answer was yes, he wanted to be a good neighbor but here we were months later and there hadn't been a whole lot of cooperation and not a whole lot of good neighbor-ship. How was that to be dealt with.

Attorney Ben Freudenberg said that was in the past and all they could do was move forward and they were trying to make things happen.

Attorney Ben Freudenberg asked that the hearing be continued to gather more information in general but they were very concerned about what Mr. Burton addressed in his handout that applied that there was a fire, life and safety issue at the plant which they disagreed with. Obviously they had been issued a Certificate of Occupancy and that their plans had been approved seemingly but felt it was an inflammatory accusation, an inflammatory slander against the plant that he believed they were entitled to have some additional time because Mr. Burton stated that he cut and pasted so he was not sure and he did not have copies. They needed additional time to go to the Fire Marshal and get an expert to look at it and didn't want to leave that accusation hanging in the air and be something that the City Council was thinking about they hadn't had a chance to say yeah, but, there was this and that and actually preceded final approval so they would ask for a continuance.

Public Works Director Michael Bollweg commented that those issues were not heard by the Planning Commission.

Attorney Ben Freudenberg commented that he believe Mr. Burton made the same comments during the Planning Commission meeting and now the City Council has heard his comments so they deserve an opportunity to review it and bring information that would counter it.

City Councilor Pam VanArsdale commented that if it had been heard at the Planning Commission level then shouldn't he have been prepared for it during this meeting.

Attorney Ben Freudenberg said it wasn't the basis of which the Planning Commission made their decision.

City Councilor Pam VanArsdale said they were considering something that the Planning Commission made their decision on.

Attorney Ben Freudenberg replied that the plans were approved and they had been operating for eighteen months now they have someone come in with letters supposedly from the Fire Marshal that they had not seen in that format. They

wanted the opportunity to come back and say they had read it all and that was what happened. They would talk about what they have in the plant with the information they had.

City Attorney Michael Franell said to Mayor Stuart that since they were requesting, that the hearing be continued because of the information that had come in, that it would be appropriate to continue the hearing and not make a decision tonight.

City Planner Ryan Nolan concurred with Attorney Franell.

MOVED (HILTY), SECONDED (GREGORY) AND CARRIED TO CONTINUE THE PUBLIC HEARING FOR CUP 2021-03 TO OCTOBER 14, 2021 AT 6:00 P.M.

City Administrator Mark Reagles commented that after reviewing some of the pictures that had been presented that it may be appropriate for staff to do a site visit because seeing things in person would make it more comfortable to be able to answer questions of the City Council.

Mr. Dale Hurst said that was okay with him.

Susan Kirby also offered for staff to come to her property to see the other side of the project.

City Administrator Mark Reagles asked Mr. Hurst if he would continue operating from 7:00 am to 10:00 p.m.


Mr. Hurst agreed that there would be no ice production from 10:00 p.m. to 7:00 a.m. though there would still be people in the plant but machinery that made ice would not be running but there would be loading.

City Attorney Michael Franell stated that the original conditional use permit stated that there would be loading and unloading between 7:00 a.m. and 3:00 p.m. Monday through Friday.

ADJOURN

There being no further business to come before the City Council and upon motion duly made (VANARSDALE), seconded (BIRD) and carried, the meeting adjourned at 9:18 p.m.

ATTEST:


Carol J. Weir, MMC
City Recorder