

CITY OF ROGUE RIVER

City Council Minutes

THURSDAY, OCTOBER 14, 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
Michael Bollweg, Public Works Director
Jim Williams, Chief of Police
Paige Chick, Clerk Typist

ATTORNEYS PRESENT:

Michael Franell, Attorney at Law

MEDIA PRESENT:

Brian Mortensen, Rogue River Press

A quorum was present and due notice had been published.

OLD BUSINESS:

AGENDA ITEM 1 **Public Hearing:** Continuing the public hearing from September 9, 2021 to 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, Oregon. Applicant: Hurst/HRP, LLC, Dale Hurst, Owner. Represented by Ben Freudenberg, Attorney at Law.

Mayor Wayne Stuart declared the Public Hearing re opened at 6:04 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 Council and audience if it was proper for the City Council to hold the public hearing: No comments were heard.

Mayor Wayne Stuart asked the City Councilors if they wished to declare any new 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.

Mayor Wayne Stuart declared ex-parte because he witnessed a semi truck and trailer enter Pioneer Court instead of the driveway that led to the ice plant and the driver's difficulty in maneuvering by backing out to East Main Street.

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.

Mayor Wayne Stuart turned the meeting over to the City Planner Ryan Nolan.

City Administrator Mark Reagles reminded everyone that they needed to speak into the microphone for everyone to hear.

City Planner Ryan Nolan explained that the meeting was being continued from September 9, 2021 to consider the appeal of the Planning Commission CUP 2016-03 approving the project and CUP 2021-03 Revocation of the Conditional Use Permit.

City Planner Ryan Nolan addressed new documents in the packet from Attorney Ben Freudenberg requesting a continuation in order to hear from the Fire Marshal who was not available for this meeting. He said there were also some additional photographs submitted with the letter. He also informed the City Council of their choices for taking action during this meeting.

Attorney Ben Freudenberg addressed his letter requesting that the matter be postponed due to the absence of Fire Marshal Gavlik since his presence was important because of the three letters Mr. Burton put into the record that were all written by Fire Marshal Gavlik expressing the necessity of his comments and the facts that he relied on. Without him being in attendance he himself nor the City was able to ask him questions or clarifications to his comments. He did say that Fire Chief Mike Hammond was in attendance.

MOVED (HILTY), SECONDED (VANARSDALE) AND CARRIED TO CONTINUE WITH THE PUBLIC HEARING TO HEAR MORE COMMENTS.

Attorney Ben Freudenberg reviewed the twenty photographs of the Ice Plant submitted with his letter received on October 12, 2021 showing the progress that had been done for sound proofing the building. He told the City Council that the sound blanket material had been delivered and would be installed on the fencing once it was completed. He also commented that since questions and concerns were expressed about fire during the previous meeting they wished to have Fire Marshal Gavlik in attendance to provide his knowledge and expertise. He said they were fine with the City Council continuing with this public hearing to hear more testimony and leaving the record open to hear from Fire Marshal Gavlik.

Attorney Ben Freudenberg commented that it seemed that there was a notion that the plant was not well designed or constructed and an unsafe operation so they had asked Steve Farris of ER Electrical to talk about a system that served to rapidly evacuate from the south end of the building where the ammonia tank was located. He said that ammonia was a naturally occurring chemical, it was used to make household chemical products, used to make fertilizer and used in refrigeration, It was lighter than air generally and did not settle generally. Mr. Freudenberg then handed out the previously mentioned photos to the City Councilors.

Steve Farris owner ER Electric in Grants Pass said his company did the electrical installation at the Ice Plant and all the safety components that came with it. He said the system they were viewing in the photographs Exhibit A and B was an evacuation system with a sensor that recorded parts per million of ammonia which had a safe point set for humans to be in the area. At a certain point it would trip an alarm that would open up the louvers to get fresh air into the building and evacuate the ammonia out the roof. It also came with a motion sensor indicating if someone was in the room, mainly to make the employees safe in case of an ammonia leak. He indicated that in photograph Exhibit C was the high-powered exhaust fans, though he could not remember the CFM rating, but it was very high and that was the reason for the louvers that would let the fresh air in and evacuate anything in the building within seconds with a visual and audible alarms which triggered at the same time. Photograph Exhibit D was the master controller that was located outside of the room and could be turned on manually if someone was uncomfortable with the level of ammonia since there was always a little hint of ammonia in there but not dangerous levels by any means. The outdoor controller could be used at anytime and would override the automated system, if the automated system failed. Mr. Farris referred back to photograph Exhibit C pointing out the sensor from the wall under the lowest exhaust fan that lets the system know that somebody was in the room.

City Administrator Mark Reagles asked about the effect of ammonia outside of the building once the exhaust process started, was ammonia lighter than air, it was one thing if it vented into the natural environment but what if it was raining, how did that change the evacuation of the outside environment.

Steve Farris said it did not change, the fans were covered and not subject to

ambient conditions.

City Administrator Mark Reagles said he didn't phrase his comments well. He asked what happened to the ammonia once it was evacuated back into the atmosphere if it was raining, how does the public respond to that, it's one thing if there were no rain and the wind carries it off over the mountain, but if it were raining and the ammonia hit the rain did it then come back down to the ground.

Mr. Farris responded that he couldn't answer that but you would think that it would be diluted enough where it wouldn't be toxic at that point.

City Councilor Barb Gregory asked if there was a leak what would be the effect on the atmosphere?

Mr. Farris said that he was not a scientist and could not answer her question. He was aware that there was concern about what would happen if the motor were to explode and they had a main control system in the electrical distribution panel and if there were any fault ground that instantaneously shuts down the electricity to the whole building.

City Councilor Barb Gregory said she understood how the electricity worked but she was asking about the effect to the atmosphere.

City Administrator Mark Reagles asked Mr. Freudenberg if the public hearing was continued did he have dates when Fire Marshal Gavlik would be available.

Fire Chief Mike Hammond responded that Mr. Gavlik would be available any time after the 20th of October he would be available since he was currently out of the country.

City Councilor Barb Gregory asked Fire Chief Hammond if he had information of his own and was he familiar with Fire Marshal Gavlik's letters and could he speak to them.

Fire Chief Hammond stated that he was not a Fire Marshal, he was the Chief so there was a lot answers he might not have but he could answer questions that had to do with the department's responsibilities and how they would respond to certain events at the Ice Plant but felt he could get answers in a short amount of time to her. As far as Mr. Gavlik's letters, he was not involved in the approval process of the plant and testimony he gave would be hearsay, he did not have any personal knowledge of it.

City Councilor Barb Hilty asked Fire Chief Mike Hammond to explain what they would do if there were a fire in the plant, what would that fire look like.

Fire Chief Mike Hammond said that in the Rogue Valley all the agencies rely on a mutual aid system for large events such as a structure fire and use each other resources, so a structure fire in Rogue River would be four engines on first alarm, Rogue River would provide one engine, Evans Valley would provide an engine, City of Grants Pass would provide an engine and the fourth engine would come out of Central Point. That was the first alarm, each additional alarm would provide two additional engines up to four alarms which would give you ten engines. If that were not enough a structural strike team that would come from the Medford area that would be five additional engines that would come in a package, making it a total of fifteen engines.

City Councilor Barb Hilty said knowing about the ammonia what would the evacuation process look like.

Fire Chief Hammond said that the initial arriving officer would have to size up and then form his tactics. If it was a small fire typically, the initial engines would respond to the plant and attack the fire and if it was a large fire the engines would respond to the trailer park and evacuate the trailer park and protect the trailer park. Then they would rely on additional engines to attack the fire.

City Councilor Pam VanArsdale said she was trying to grasp what size of a fire would be and asked Chief Hammond how many alarms were the recent fire at the Double R Pub and laundromat.

Fire Chief Hammond said it was a three-alarm fire and commented to put things in perspective, the Ice Plant was not the largest building in Rogue River, the mill and the schools were a lot larger, Ray's Market was about the same size but the difference was those buildings had a very large and defensible perimeter, if those buildings burnt down they would burn down by themselves. The complication with the Ice Plant was that it was thirty-feet from the trailer park that consisted of thirty units and most of the occupants were elderly and had mobility problems so the evacuation process would be complex for them.

City Administrator Mark Reagles asked Fire Chief Hammond knowing what was contained in the Ice Plant would hazmat be immediately called if you were alarmed out for a fire in that location.

Fire Chief Hammond said it would depend on the determination of the leak, just for a leak the evacuation would be three-hundred-fifty-feet, if the tank were involved in the fire the evacuation would be one-mile. Hazmat would respond from the Medford Fire Department who had three ways to determine their response, first by a phone consultation, second, they could respond with four technicians or three a full response with an engine and eight technicians.

City Councilor Pam VanArsdale referred to the Fire Chief's comment of evacuation

of a mile. The City of Rogue River was only as large as a mile square.

Fire Chief Hammond said that would only be if the tank with the ammonia was in the fire but it would probably be an unusual situation, if just a leak the initial evacuation would be three-hundred-thirty-feet which would include the trailer park and several other units around it.

City Councilor Barb Hilty asked if the Ice Plant was currently in compliance with the fire code and a sprinkler system.

Fire Chief Hammond said the plant did not have a sprinkler system and as far as he was aware they were in compliance.

City Councilor Barb Gregory asked how flammable was ammonia.

Fire Chief Hammond said that ammonia vapors were not easily ignitable unless it was concentrated very heavily which was pretty hard to do. The bigger danger with ammonia was inhalation which could burn your lungs.

Mayor Wayne Stuart asked Fire Chief Hammond if he had any experience with ammonia before.

Fire Chief Hammond replied he had not, anhydrous ammonia was a common industrial chemical use in just about any cold storage facility as a refrigerant.

City Administrator Mark Reagles asked Fire Chief Hammond if he was aware of any other locations other than ice making that you would find a large storage of anhydrous ammonia.

Fire Chief Hammond replied any cold storage facility where they store groceries.

Attorney Ben Freudenberg commented that he had submitted into the record a fact sheet on ammonia that he retrieved from the internet said that the Fire Chief was right on, it occurs naturally, the human body makes some ammonia and it does dissipate. It agreed with what the Chief said, it was not highly flammable, ammonia gas was lighter than air and will rise. So generally it did not settle in low lying areas and in some circumstances it may not rise but in general it does and the fact also confirmed that it was a natural occurring chemical as the Fire Chief stated for widely used for all kinds of refrigerant.

City Councilor Barb Hilty asked Attorney Freudenberg referring to photographs one and two where they talked about the temporary structure asking if it was the installation and would it get wet in the rain or would it be more permanent before the rainy season came.

Attorney Freudenberg said it was temporary and those two units would be going up on the roof, which required some engineering, the structural engineer had completed the design of the structure the issue was finding steel so the temporary structure of plywood and for as long as it takes they could cover it so it didn't get wet. How long was temporary, was by supply issues, but underway.

Attorney Garrett West with O'Connor Law in Jacksonville, Oregon who represented Mr. Hurst and his various LLC's submitted an additional letter into the record. At the last hearing there had been some comments made regarding the lighting on the outside structure of the plant on the back fence along the east side toward the mobile home park, again the gravel area that was outside by the loading dock past the paved area to the west. His letter contained pictures that he wanted preserved as record regarding those items as well as some additional arguments regarding the non-existence of the grease trap on the property where the ice plant was located which finalized the applicant's comments.

Susie Kirby a resident of the Pioneer Mobile Home Park said she about fell over in her wheelchair when she found out there was no fire protection in that building. Whether that gas would or would not take over the east part of the park no one seems to actually know. That's scary for people in her side of the park was mainly what she wanted to say. And, she didn't want to reiterate but Mr. Hurst signed a contract with the City with certain stipulations on how the building was going to be built and it just seemed that he had not followed the stipulations and the rules for the building. She would like the City to know that the new manager for the mobile home park was now on site and she was appalled of how the building was built and how it would depreciate the park in general and that she would be introducing herself. Ms. Kirby expressed her worries of fire prevention and more of a grip on what needed to be done to protect the park, those homes were put in the park in 1978 and 1979 and the people at Ace Hardware could tell you the exact lengths and widths of what was used to construct the mobile homes. The Fire Chief and Fire Marshal were both aware of a recent home that went up in flames and that the clean up took longer than the house going down and unfortunately the owners didn't have insurance and she wasn't aware they went on from there. She said the heating and cooling was out of code in a lot of the mobiles and if you owned the home there was always a lot of repairs and things that the managers put on the tenants.

City Councilor Barb Hilty commented that she had received a list of things that had been done in the last couple of weeks and asked Ms. Kirby if she had noticed any difference in sound.

Ms. Kirby said that actually she had gotten so use to it that it had become superfluous to her it had gone on for so long that it had become a part of her life and if they got new tenants in the park they would notice it immediately.

Daniel Burton a resident of the Pioneer Mobile Home Park submitted and read a

written document for the record. He said if the City fire, life and safety personnel did not have adequate resources for Fire Marshal Mike Gavlik to evacuate residents if a fire or an ammonia leak were to occur at the Ice Plant Factory, and also do not have adequate resources to contain and mitigate a fire or ammonia leak of this potential magnitude, why was the project approved in the first place. Our good City Council should answer these important and puzzling questions, as we the people certainly wonder and have a right to know the answers, particularly as they relate to the promotion of health, safety and welfare of its citizens. Although there are parcels that are zoned commercial next to residentially zoned parcels in many cities, such as the doctor's office and the dentists' office and First Community Credit Union, they blend well with residential areas and are appropriate due to reasonable hours of operation, low or no noise and do not contain health, safety and welfare concerns. In stark contrast to this and by simple definition, an ice manufacturing and distribution plant was clearly an industrial business, which posed significant fire, health and safety risks to the community and should be located on an appropriately zoned parcel that is designated for industrial use. He also included an article that clearly distinguished the difference between commercial and industrial zoning. It was felt that the rezoning of the property from residential to commercial and the permitting of the construction and operation of this industrial business at this location has resulted in a significant stain on our community. It had also resulted in ongoing and deep sadness, and undo stress to seniors and other citizens, diminished home values, health and safety concerns, lack of sleep, and ongoing frustrations to long time residents. Despite the kind and appropriate comment made by one of the City Councilors at the last meeting which was, why should these people have to endure this misery for one more day, the Attorney representing Hurst LLC, falsely claimed that the letters from the Fire Marshal were new information that required investigation and sadly another month of misery for the seniors had occurred. Despite the fact that one of your Council members correctly stated in the last meeting that this was not new information and that it had been presented at the previous meeting, now another month was allowed for investigation based on the false claim of it being new information. The facts clearly show that this was not new information and there was ample time that should have been used to investigate the validity of the letters presented before the last meeting in September. He read the following items contained and quoted verbatim in the three letters from Fire Marshal Mike Gavlik, 1) using the 2016 Emergency Guidebook as a resource, anhydrous ammonia Guide #125, ID #1005 lists the chemical as a corrosive gas, it may be fatal if inhaled, ingested or absorbed through the skin, if this facility were to be on fire, their initial evacuation distance is one-mile in all directions; 2) as stated in my previous letter to the City of Rogue River dated 10/9/19, I expressed my concern over the life safety of the residents in Pioneer Court in particular, should the Ice Plant and warehouse ever catch fire or have a large gas leak; 3) I would like to reiterate my concerns for life safety of this proposed project. Should the ice warehouse ever catch fire or have a significant gas leak, the 5,500 lbs of anhydrous ammonia could be lethal to the surrounding residents; 4) RRFD does not have the equipment, or staffing, to fight a catastrophic warehouse fire of this magnitude, Mr.

Burton commented that he understood mutual aid, Cental Point and Medford at least twenty to twenty-five away on a good day of a commute, fires spread extremely rapidly as seen downtown, on Fielder Creek and the home that burned down next to his; 5) We also do not have staffing to evacuate residents of RR in the event of a large fire or large gas leak, Mr. Burton commented if a fire occurred rapid evacuation was critical, people could die and despite the fact their saying that ammonia floats into the air, there's ample evidence that when there's high humidity or rain it drops to the ground and can kill everything in its path; 6) Water Flow requirement needed to fight a fire at this location cannot be met by the City of Rogue River's water distribution system; 7) If the Lil' Pantry store, or the residences on Pioneer Court were to catch on fire, then the water supply needed would increase tremendously. This is not taking into consideration the potential new building to the west of the Factory; and, 8) I am concerned with about the residences on Pioneer Court. A large warehouse fire would generate tremendous radiant heat and jeopardize the lives and property of older citizens with very limited mobility and means for self-preservation.

Mr. Burton continued stating that additional concerns exist due to the fire hazards that have been cited around this property. Again, there had been a lot of fire locally and it's not rare, towns are burning down around us. When their Attorney said that it would be condemning the property and making it worthless was not true at all, there are other lucrative things that it could be used for.

Bonnie Marshall a resident of Pioneer Mobile Home Park said her back fence was approximately ten-feet from the ice house. She gave her thanks to the people who finally noticed this was a real problem and it wasn't just about the noise which was more than disturbing, it's much more. In December of 2019 the ice house in Charleston, Oregon was destroyed by fire, this ice house, probably a third of the size of Mr. Hurst's, was set on a pier out into the harbor. It sent up a plume of ammonia, causing an evacuation of one-mile surrounding the ice house and past that people were told to shelter in place. It's all on the internet, pictures and everything. She has told that there was a vacuum process which was discussed tonight in case of a leak. In the case of a mechanical leak issue that might be acceptable, in the case of a fire all bets are off. The devil had control and at high temperatures ammonia was explosive, toxic and lethal. And there it sits, right in the middle of town. This had a potential of possibly destroying a good portion of our City and population. This doesn't sit on a pier out in the harbor. And if you don't believe these things can happen, ask the people in the Alameda Fire, the Paradise Fire in California, the Charleston Fire itself and the list goes on. She doubted that any amount of structural integrity would make a difference in a volatile fire. And the last thing she wanted to say to the City Council and the Planning Commission, you own this and she hoped that the money was worth it.

John Bond a member of the Fire Board said he simply submitted his name in case there were any questions that were asked, he was there to support the Fire Chief

from the Fire Board and any questions he may have.

City Councilor Pam VanArsdale said she had to say that in the defense of City Council and the Planning Commission she read a letter to Ms. Marshall since it was what they based their decisions on. The City received the letter of intent on September 27, 2016 that read: Dear Mr. Reagles; we are intending to erect a new building at 501 East Main Street, Rogue River, for the purpose of supplying products and ice to the stores. The hours of delivery will be Monday through Friday from 7:00 a.m. to approximately 3:00 p.m. The business will employ approximately ten warehouse workers including part time and full time, They were an equal opportunity employer and will continue to practice safety in all areas for the business. The nature of their daily operations would include food preparation and ice production and packaging and loading the delivery vehicles with said products for daily deliveries to the stores. They would be enlarging the existing parking lot to accommodate truck maneuvering room and for a three-door loading dock for the delivery trucks but the entrances and exits will remain unchanged. Their own vehicles would be the only vehicles coming and going onto the new area premises usually being loaded one to two times per day depending on the season. She said that was the letter received and that it was what they thought was going to be built there, a place to store products, do food preparation and make ice for their stores, not for the State of Oregon. Now you know how it got done or at least what the City thought was going to be happening there.

City Planner Ryan Nolan reminded the City Council of what was before them, it was the specific action of an appeal of a decision of the Planning Commission and there was a lot of information in their packets, including information that had been submitted and more information tonight but what they really were asked to do was to consider appeal that the applicant filed where they had voiced eight specific issues. The applicant had requested a continuance to hear from the Fire Marshal so you would continue the meeting to a specific date and time to get a response from the Fire Marshal, but as you're looking to go forward they would need to contemplate the eight issues they had specifically raised in their appeal and they would need to have an answer to those questions. The Planning Commission looked at the original 2016 approval and said there were ten of the fourteen conditions they did not feel were being met. The applicant had stated that they did not agree with that and raised eight specific questions stating they felt they were meeting or were working to meet all those conditions. The discussion right now was do they continue with a specific date and time to allow the Fire Marshal to testify and then going forward specifically addressing the eight questions the applicant had raised on their appeal, then look at the original conditions and see if they had been met.

City Councilor Barb Hilty commented they had discussed about the fire, they talked about the noise but they had not talked about the hours of operation and could they do that now.

City Planner Ryan Nolan told Councilor Hilty they would need to raise all their questions before they decided to close the public hearing. He told the Council their options were to close the public hearing, close the public hearing and go into deliberations or close the public hearing and leave the record open with deliberations at a certain point giving specific number of days to give any further information to be provided by the Fire Marshal and then you have to give the applicant legally seven days to provide additional response to that and deliberate on the additional items or choice to continue the hearing to accept information from the Fire Marshal and additional information.

MOVED (VANARSDALE), SECONDED (BIRD) TO CONTINUE THE PUBLIC HEARING TO THURSDAY, OCTOBER 28, 2021 AT 7:00 P.M.

City Councilor Pam VanArsdale explained the reason for her motion was to hear from the Fire Marshal and allow them to deliberate after getting the additional testimony.

City Councilor Barb Gregory said she felt that the information from the Fire Marshal would answer all of the questions that they had concerning the other parts of the conditional use permit that was not being met.

City Councilor Pam VanArsdale agreed but have the Fire Marshal give testimony in person other than reading his comments and for the sake of the public and probably the applicant should hear what he has to say.

City Councilor Jack Bird said he agreed with Councilor VanArsdale's reason for her motion.

MOTION CARRIED BY A ROLL CALL VOTE.

ADJOURN

There being no further business to come before the City Council and upon motion duly made (VANARSDALE), seconded (DAUGHERTY) and carried, the meeting adjourned at 7:16 p.m.

ATTEST:



Carol J. Weir, MMC
City Recorder