



City of Lyons

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## **LYONS PLANNING COMMISSION MEETING/HEARING** **OCTOBER 9, 2012**

### **OPEN MEETING 6:00 P.M.**

Planning Commission Co-Chair Ed Jones called the Lyons Planning Commission meeting to order at 6:00 P.M. Present were Planning Commissioners Steve Baldwin and Michelle Keirse-Coulibaly. Planning Commissioner Darren Cross was excused. City Manager Mary Mitchell and Assistant City Manager Audrey McNerney attended as staff.

### **GUESTS**

D. C. & Carol Hendrix, Doug Miller, Keli Lulay, Gerald Lulay, George L. Geddes, Troy Donohue, Joyce A. Foltz, Barbara Orr, Mark Orr and Theresa Donohue.

Jones asked that all stand for the Pledge of Allegiance. He then inquired as to whether there were any declarations of conflict of interest or ex-parte contact regarding the agenda items. There being none, the meeting continued.

### **MINUTES**

Baldwin made a motion to approve the Minutes of the June 22, 2012 Planning Commission Meeting. Keirse-Coulibaly seconded the motion. Voice vote. Motion carries.

### **OPEN HEARING**

Jones opened the hearing and McNerney presented the Staff Report in connection with the application by the City for a Conditional Use Permit to authorize the placement of a Model Year 2000, 22-foot Prowler Lite Travel Trailer, Plate #R-719114, owned by Public Works employee Doug Miller, on the property located at 725 N. 13<sup>th</sup> Street north of the City Shop Building. This placement would be of a non-permanent nature but would allow Miller to spend two to three nights per week in residence rather than to commute daily between his home in Albany and his employment in Lyons. (Miller works 3 days per week.)

After the presentation of the Staff Report Jones read the rules for presentation of testimony at a hearing.

Lulay asked why the fee had been waived for the permit application. McNerney explained that the charge was waived because the City was the property owner and, as such, the applicant. There is no reason for the City to charge itself a fee. Lulay stated that she thought that Doug Miller was making the application. McNerney explained that Miller had made the request to the City Council for permission to park the trailer but that he was not the applicant.

Lulay took issue with the statement in the staff report that Miller's presence would be a deterrent to vandalism in the park area and that vandalism doesn't occur in inclement weather because that is not when the juveniles and drug offenders are out and about. Lulay felt this was not a valid reason to allow Miller to park the trailer on City property.

She also stated that she had checked with the Bureau of Labor Industries (BOLI) and had found that a non-salaried employee cannot be on call 24-7. She said that the City could not request that of an employee and that providing him with water and electricity and a place to live is also against BOLI rules.<sup>1</sup>

She went on to state that she felt that it was an ethics violation to give special privileges to an employee so that they did not have to drive in inclement weather because everyone has to drive in inclement weather to get to work. She also stated that saving him gas money was a poor reason to give him special privileges.

Lulay said that there was no way to track the water and electricity because there was no meter on the property. In checking with the Water District she found that free water was provided to the City. It was not for the use of a public employee. She said that no one from the City had advised the Water District of the City's intention to provide free water to the trailer. As a result the Water District has placed the issue on their agenda to discuss whether or not they wanted to continue to provide water to the City free of charge.<sup>2</sup>

She also raised issues regarding possible DEQ problems because of standing water where the trailer would be located.<sup>3</sup> She also stated that there might be violations of ORS which prohibits people from living in a travel trailer for extended periods of time.

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<sup>1</sup> Since the employee was not required as a condition of his employment to be "on call" there was no wage and hour violation so long as he was paid for the hours he worked. In addition, since the employee would be residing on the property for his own benefit it is acceptable to allow the employee to use the utilities at no deduction from his pay. (Per Manager, Technical Assistance for Employers Program BOLI)

<sup>2</sup> Miller's travel trailer is self contained and Miller would be fully capable of supplying his own water.

<sup>3</sup> The trailer could easily have been relocated to an alternate location on the same parcel.

She also questioned how Miller would handle the disposal of the grey water from the trailer. She volunteered options as to where he could park his trailer.<sup>4</sup>

Donohue stated that his complaints were basically the same as those of Lulay. He felt that if the City were to allow Miller to do this the City would be setting a precedent for other applicants to apply to live in camp trailers on City property. He went on to state that all City properties are day use only and are so posted. Donohue said that Miller had been making the commute since he had been hired and knew the distance he had to travel when he took the job. Donohue commented that if the distance is too far for Miller to travel he may wish to find employment closer to home. He also commented that if he lives too far away to be adequately on call for the City, the City may wish to replace him with someone who lives closer. Donohue said lastly, but not least, that he and his wife did not wish to look at Miller's camp trailer across the street from his house.

Orr asked whether anyone had checked with the insurance company to see if this would be a problem. He went on to state that even if Miller signed a waiver when attorneys get involved waivers really don't mean a lot. McNerney stated that she had not. Orr also stated that you can't ask an employee to do something without being compensated. It is a wage and hour violation and you may have put the cart before the horse and didn't do adequate research on the issue. Orr went on to say that while he felt for Miller he (Orr) had to commute to work every day.<sup>5</sup>

Jones commented that when he had looked at the information in connection with the application he didn't see a problem with it. It seemed like it would be good idea to help someone out. However, he felt that some valid points had been raised.

There was additional discussion regarding the matter along the same vein.

There was heated discussion between Conner and Donohue regarding the request which had led to the concurrence by City Council members that McNerney should move forward with an Application for Conditional Use. Conner read from the Minutes a section relating to Donohue's positive remark regarding placement of the trailer. Donohue said that the language set forth in the meeting minutes were not his words. (Note: The minutes did not reflect these words as a quote but rather as a description of the benefits and were not intended to be a verbatim statement.)

Theresa Donohue stated that they have a very active neighborhood watch in the area and that they contact the Sheriff's Office when they observe criminal activity taking place.

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<sup>4</sup> Miller had made arrangements with Ace Septic to empty his holding tank (at his expense) in the event that the application was approved.

<sup>5</sup> Because the provision of a waiver of liability was to have been a condition of approval the City's insurance agent would have reviewed Miller's insurance policy to be sure of its sufficiency.

When asked if the site was a designated wetland area Jones responded that there are wetlands in the park but not where the City shop is located.

Mrs. Donohue said that she wanted to make it clear that they have nothing against Miller; that he is a very nice person but that the issue was what he was requesting.

Mr. Geddes stated that he was offended by the assumption that the Water District was going to furnish free water to a city employee. He said that he was the chairman of the Water District Board and that as such he would guarantee that this would not happen.

Miller said that he had advised Mitchell that if there was any problem with the residents across the street to “forget about it.” (Referring to the Application) He went on to state that it was nice that the opportunity had been offered to him. He enjoys working in Lyons but he can understand the residents’ problem with the issue.

Keirse-Coulibaly said that while it can’t be a deciding factor we can’t forget about compassion towards one another. She went on to state that she didn’t agree with the furnishing of the water and electric. She acknowledged that driving Highway 226 during the winter is very difficult and that Miller might consider looking into one of the nearby trailer parks as an option.

Baldwin stated that if the Planning Commission makes an exception in this instance the City might have to make an exception for any other request which might come about as a result.

Donohue said that he wanted to make it clear that this was not personal. He said that he felt that, as a councilman for the City, that Miller does a wonderful job for the City.

Conner said that he would like to apologize to Mr. Donohue and Mrs. Lulay for his outburst.

### **HEARING CLOSED**

Keirse-Coulibaly made a motion to deny the request for the Conditional Use Permit, the subject of the hearing. Baldwin seconded the motion. Voice vote. Motion carries.

There was additional discussion regarding the provision of free water for City uses and Geddes said that he was offended that the Water District had not been notified of the City’s intent. Geddes said that the Water District Board had had some discussion regarding whether they would continue providing free water to the City.

### **OLD BUSINESS**

**248 Cedar Street Butler/Grossnicklaus Medical Hardship Finalization.** McNerney advised Planning Commission that the owner of the property had submitted a Certificate

of Satisfactory Completion for a subsurface or alternative sewer system on the property. The receipt of this document satisfies the conditions upon which the approval of the medical hardship application was granted.

Since the condition of approval of the Medical Hardship Application has been met, Keirse-Coulibaly made a motion to approve the Medical Hardship Application filed by M. Lowell Butler on May 18, 2012 effective this date. Baldwin seconded the motion. Voice vote. Motion carries.

### **NEW BUSINESS**

**Medical Hardship Reviews.** McNerney advised Planning Commission that the owners of the properties on which all of the Medical Hardship Manufactured/Mobile Home placements presently exist have provided doctor's certifications of such medical hardships. They are as follows:

- 1349 5<sup>th</sup> Street            Anderson
- 644 5<sup>th</sup> Street            Griffith
- 342 Cedar Street        Gurule
- 844 5<sup>th</sup> Street            Orr

The medical hardship at 363 7<sup>th</sup> Street no longer exists and the mobile home has been removed.

McNerney apologized to the Commissioners stating that there had been few Planning Commission meetings over the past few years and the last biennial review of medical hardship applications had been overlooked. After reviewing the files doctor certifications were requested to ascertain that the medical hardships still existed and that there were no violations. These files will now be calendared for review in 2014.

Baldwin made a motion to approve a two year continuance of the medical hardship placements at the properties located at 1349 5<sup>th</sup> Street, 644 5<sup>th</sup> Street, 342 Cedar Street and 844 5<sup>th</sup> Street. Keirse-Coulibaly seconded the motion. Voice Vote. Motion carries.

Jones read the announcement set forth on the agenda which states: "Due to the absence of the Planning Commission Chair for the remainder of the calendar year and the existing vacant position on Planning Commission, the review and subsequent updating of the Comprehensive Plan has been continued to after the first of the year." After discussion the Planning Commissioners concurred with the continuance.

There being no further business to come before the Planning Commission, Baldwin made a motion to adjourn the meeting. Keirse-Coulibaly seconded the motion. Voice vote. Motion carries. The meeting adjourned at 6:45 PM.

Audrey McNerney

Assistant City Manager