

City of Selah
Council Minutes
June 10, 2008

Regular Meeting
Selah Council Chambers
115 West Naches Avenue
Selah, WA 98942

A. Call to Order Mayor Jones called the meeting to order at 3:50pm.

B. Roll Call

Members Present: Summer Derrey, Keith Larson, Denise Nichols, Paul Overby, Herb Schmidt; John Tierney

Members Excused:

Staff Present: Frank Sweet, City Supervisor; Bob Noe, City Attorney; Stacy Dwarshuis, Police Lieutenant; Joe Henne, Public Works Director; Dennis Davison, Community Planner, Jeff Hagler, Parks & Recreation Director

C. Pledge of Allegiance

Councilman Larson led the Pledge of Allegiance. Pastor Doug Perkins led the group in prayer.

D. Agenda Changes

Mayor Jones announced a change in the Agenda, a 30-minute Executive Session on litigation after Item M-2.

E. Public Appearances

F. Getting To Know Our Businesses

G. Communications

1. Oral

2. Written

- a. Letter from Superintendent Larry Parsons *Best of the Best* Award presented to Police Officer Jerald Smith
- b. Note from Betty Hodson, Silver Set Club to Detective Dan Farrell
- c. Letter to Fire Department from Anne & David Burkett

The Mayor enumerated each item under Written Correspondence.

Councilman Tierney asked if a berm had been put in front of the Burkett property.

Public Works Director Joe Henne stated a berm had been put across in front of their driveway, but that was not enough to hold back the 30,000 gallons that came out of that broken main.

H. Proclamations/Announcements

I. Consent Agenda

All items listed with an asterisk (*) were considered as part of the Consent Agenda.

- * 1. Approval of Minutes: Study Session & Council Meeting May 13, 2008
- * 2. Approval of Claims & Payroll: Payroll Checks Nos. 63432 – 63511 for a total of \$117,527.18, Payroll Checks Nos. 63512 – 63599 for a total of \$164,044.64, Claims Checks Nos. 51834 – 51922 for a total of \$338,929.66, Claims Checks Nos. 51923 – 51925 for a total of \$175,123.10 and 51926 – 52024 for a total of \$496,291.05.

Mayor Jones read the Consent Agenda.

Councilman Schmidt moved approval of the Consent Agenda as read. Councilman Tierney seconded. By voice vote, Consent Agenda was adopted unanimously.

J. Public Hearings

K. New Business

1. Selah Youth Center Support

Parks & Recreation Director Jeff Hagler addressed New Business Item K - 1, noting the City has had good partnership with the School District, Selah CAN and YVCC and have averaged 40 students each day. He stated he is requesting same amount, \$7,000, for the period starting the fall of 2008 through spring of 2009. He stated the School District will consider it on Thursday.

Councilman Overby moved support of the Selah Youth Center in partnership with the Selah School District, Selah C.A.N. and YVCC in the amount of \$7,000. Councilwoman Nichols seconded. Roll was called: Council Member Schmidt – yes; Council Member Larson – yes; Council Member Overby – yes; Council Member Nichols – yes; Council Member Derrey – yes; Council Member Tierney. Support was unanimous

2. Acceptance of the Shaver, Hurst, Garner, Van Alstine, Stern, Southern Avenue Properties, LLC and City of Selah “Notice of Intent to Annex Petitions” (File: 920.81.08-02)

Community Planner Dennis Davison addressed New Business Item K - 2 annexation and called Council Members’ attention to the petition in their packets. He noted the maps show proposed annexation areas: A-valued upwards of \$2.5 million, B-valued at about \$1 million, and C-valued at about \$1.3 million. He stated proposed annexation area "C" is recommended by staff. He stated Council's approval would commence the process, and he would send out notices to everyone who's in the annexation boundary,

send petitions to them, and if returned petitions represent more than 60% of the assessed value of the area, proceed from there. He noted if it is less than 60%, the annexation will die of its own volition.

Councilman Tierney asked the Planner about a rectangular piece of property included in each area.

Mr. Davison explained that the property owner did not respond to correspondence from his office, but that property would be included in any annexation area that received 60%+ approval.

Mayor Jones called for speakers from the audience for or against the annexation.

Chuck Johnson 11 East 1st Avenue, representing Lookout Point Partners LLC, addressed the Council. He noted he has been working with the Community Planner regarding 170 acres at the end of Southern Avenue. He said the issue is whether we have the 60%.

The Community Planner confirmed that with either option B or C we have over 60%.

Mr. Johnson said pursuing option A would be a waste of everyone's time since there is not 60% support.

Carmen Lowrie, 971 Southern, addressed the Council. She noted Mayor Jones had signed a petition.

He explained that he signed because the City owns property in that area; the City of Selah owns 5.75 acres on Crusher Canyon.

There was some discussion about where the City property lies.

Ms. Lowrie referred to Comprehensive Plan Amendment 2001-1 and the Minutes of the Planning Commission November 18, 2003. She read her prepared statement as follows:

June 10, 2008

To: Selah City Council

RE: Annexation Petition Consideration for a portion of the Selah Urban Growth Area Located in the SW Basin

In April 2004 the City Council adopted the Selah Urban Growth Area Southwest Basin Sub-Area recommended by the City of Selah Planning Commission. This consisted of a Transportation and Utility Corridor Map for the Southwest Basin Sub Area of the Selah Urban Growth Area Comprehensive Plan. See attached.

In the January 2005 City of Selah Transportation Improvement Plan the Level of Service analysis showed that the worst traffic conditions occur at S. First Street and Southern Ave. Traffic waiting to turn onto First Ave. (sic) is currently operating at LOS "F" with potentially very high levels of delay. The level of service will continue to exceed city standards in 2010.

With the much expected new future residential development expected in the Southwest Basin Area it is without question the impact it will place on the road system on Southern Avenue.

With the current petition and the additional signed & submitted "Notice of Intent to Annex Petition" the R- 1 zoning would increase single family homes by (estimate) 1071. At 10 trips per day per household equals 10,715 vehicle trips, which impacts a currently deficit intersection.

Add to that number: phase 2 (Eagles Ridge) on South 7th Street which will add 13 or more new single family residences (Parcel #18130242461). An R-3 development at 605 Southern Ave. (currently in litigation) could add 24 single family residences. An R-3 development at 503 Southern (currently in appeal) could add 14 single family residences and a 5-plex is near completion located at 305 Southern (R-2 zoning .48 acre).

With utility improvements extended up Southern Ave. there is expectation of the development of approximately 13 acres west of 7th Street located on the south side of Southern Ave. within the City limits, under R-1 zoning would increase by 25 or more new single family residences. The Cherry Blossom project would add approximately 112 new single family residences and the existing and potential building lots for new homes on Lookout Point adds approximately 50 single family residences.

There is an (sic) combined potential to add 13,145 estimated vehicle trips per day to the intersection of Southern and 1st

Southern Ave. is a school bus route. Southern Ave. also is the main &/or the only access for commercial properties located at 1st Street and Southern. Southern Ave serves as the only access to the agriculture area located at the West end of Southern Ave also.

This area has been petitioned in past years for annexation - yet no studies or group has been formed to come up with a traffic solution for this area. No application for funding is in process. The intersection at Southern and 1st remains low on the list of priorities for improvements.

So, as an old saying goes - "you got the cart before the horse."

With these known facts, and interest to annex, Southern Avenue transportation improvements should not be set back in priority number. Why not form a study group consisting of concerned citizens, the City Planners and Department of Transportation to develop a transportation plan?

Please consider Southern Ave. an upper (sic) priority with regard to transportation. The Southwest Basin has the potential to be the "Apple Tree" or "Scenic Drive" of Selah with the proper planning.

I also would like to state that there was lack of notice of this public meeting to all property owners affected. The notice of such a public meeting should also be sent to all parties in the surrounding area affected by such a proposal. I also would recommend more advance notice of such meeting of more than 5 days prior - as was given. Lack of notice has put the City into some undesirable situations in the past. With an emphasis to better communication with the citizens could help prevent similar circumstances from occurring in the future.

Thank you for allowing me to address my concerns and hopefully shed some light on the impacts affecting the existing and potential new citizens in the Southwest Basin Area.

Respectfully submitted,
Carmen Lowrie
971 Southern Ave.
Selah, WA 98942

Mayor Jones called for others who would like to speak. He asked Public Works Director Joe Henne for the results of a traffic study in the area.

Mr. Henne said he couldn't remember.

Councilwoman Derrey asked if approval would require a developer to include an impact fee in a development.

City Supervisor Frank Sweet stated that this is just a notice of intent to annex, so that if a sufficient percentage is determined, then notices can be sent out. He said if a large percentage of respondents support the annexation, then there will be a Public Hearing to take testimony on the facts of the annexation.

Councilman Overby noted sometimes these things die on their own. The Council will have a chance to weigh the merits, if it survives the process. He said there is a potential traffic issue on Southern, but recognizing that you can always shrink an area and you can't enlarge it, he'd rather consider option A.

The City Supervisor noted state law requires 60%, but the Council historically has wanted 75%.

Councilman Schmidt asked how long we have set the level at 75%.

The Community Planner said the Council has discretion regarding the percentage so long as the minimum meets the state requirement of 60%. He stated, if the Council chooses to proceed, the motion is in the packet and they must set the boundary.

Councilman Overby stated if we start with A, we can always scale it back.

The Community Planner said you need to be careful not scale it back to create an island.

Councilman Larson said historically the City has not sought to annex areas unless there is resident/owner support for the annexation, noting that's why staff is recommending option C.

Mr. Davison explained that B and C are basically the same, except C is larger.

Councilman Overby asked how we know about support when we haven't sent petitions out.

The City Supervisor responded that petitions included in the packet show that support. Those people are pushing the annexation.

Councilman Overby asked about potential support of others in the area.

Community Planner Dennis Davison said the others didn't respond to the request.

Councilman Tierney said option A provides access to an outlet onto Crusher Canyon.

The Community Planner said the outlet always exists if people are willing to build a road through there.

Councilman Schmidt asked, "In all fairness, should we apply 75% to this?"

Mr. Davison responded, "If you go with option B, you should get over 75%. With option C it should be really close, with option A, not a chance."

Councilman Overby asked if we went with B or C and they were ever built out, how the City could pressure for a road.

Mr. Davison said that is usually taken care of as part of the environmental review on the project or mitigation direction to construct road, sewers.

Mayor Jones said all streets, sewers and water hookups are part of that. He noted traffic is not great enough on Southern to warrant a traffic light.

Councilman Overby said DOT doesn't want to put a light there.

The Community Planner said to remember the City has done a couple of traffic analyses. He noted streets and roads are project driven, not annexation driven.

Councilman Tierney said he likes this annexation because it would include more R-1.

Mr. Davison said, if the Council proceeds, the Boundary Review Board requires the motion in the packet be read.

Councilwoman Denise Nichols made the MOTION ACCEPTING THE SOUTHERN AVENUE PROPERTIES NOTICE OF INTENT TO ANNEX PETITION AND ESTABLISHING THE PROPOSED ANNEXATION BOUNDARY IDENTIFIED IN EXHIBIT "C" stating as follows: I move we accept the Shaver, Hurst, Garner, Van Alstine, Stern Southern Avenue Properties, LLC and City of Selah "Notice of Intent to Annex" petitions; that we name the proposed annexation the "Southern Properties Annexation" and that we:

- (1) Establish as the proposed annexation boundary the staff's recommended Exhibit "C", and**
- (2) If ultimately annexed require the assumption of a pro-rata share of existing City indebtedness, and**
- (3) If ultimately annexed the property would be zoned One-Family Residential (R-1) on the date of annexation, and**
- (4) Furthermore, the annexation petition is to be conditioned in that petitioners covenant themselves granting the City of Selah a "right of first refusal" to secure ownership of any irrigation and/or domestic water rights appurtenant to the land.**

Councilman Schmidt seconded. Roll was called: Council Member Schmidt – yes; Council Member Larson – yes; Council Member Overby – yes; Council Member Nichols – yes; Council Member Derrey – yes; Council Member Tierney - yes. Support was unanimous

L. Old Business

1. Set Date and Time for Council Applicant Interviews

The City Supervisor addressed Old Business Item L-1 noting the Council needs to set a date and time for interview of seven applicants. Councilman Overby stated Thursdays and Fridays are generally best for him.

Councilman Tierney said he sent out an email stating his belief that it would be in the best interest of the City and the Council to allow participation of the citizens and do the interviews at 6:00 o'clock at night.

Mayor Jones pointed out that attendance at Council Meetings is issue driven, and cited the example of the SSNA.

Mr. Tierney said maybe applicants would have to take time off of work to come (to an afternoon meeting).

Mayor Jones noted that being on Council is an important job, and one reason Council meetings were set at 4:00pm is so people with families can attend their kids' games, etc. in the evening. He said Selah has always been family first.

Councilman Larson respectfully expressed his disagreement with Mr. Tierney, noting evenings are not a good time for him and public participation is not pertinent in the Council's selection of a person to fill that Council spot.

Mayor Jones asked Councilwoman Derrey if she is off on Fridays. She responded affirmatively.

Councilman Schmidt said he has a problem with Fridays.

Councilwoman Nichols asked if next Tuesday would work.

Councilwoman Derrey and Councilman Tierney expressed conflicts.

Councilwoman Nichols suggested Monday the 16th.

Council Members discussed which days would be preferable and/or possible, until it was the consensus of the group that Tuesday June 24th would work, with interviews held at the end of the Council meeting.

Councilman Schmidt moved to hold interviews at the end of the regular Council Meeting to be held at 4:00pm June 24, 2008. Councilman Tierney seconded. Roll was called. Council Member Schmidt – yes; Council Member Larson – yes; Council Member Overby – yes; Council Member Nichols – yes; Council Member Derrey – yes; Council Member Tierney - yes. Support was unanimous.

M. Resolutions

1. Resolution Referring SEPA and Short Plat Appeals to the Hearing Examiner for Consideration Pursuant to Selah Municipal Code 1.60.080(B) [971.79.08-01 503 Southern Avenue SEPA and 913.79.08-02 Short Plat Appeals—Torkelson]

Community Planner Dennis Davison addressed Resolution M - 1, giving a history of action by the Planning Commission and SEPA Official regarding the property in question. He noted SSNA has filed an appeal of the approval for the final determination of nonsignificance regarding that short plat at 503 Southern Avenue. Mr. Davison noted, as in the past, he recommends that the Council delegate this issue to the Hearing Examiner who will hold Public Hearing and that the Council assign final decision authority to the Examiner and any appeal of the Examiner's decision shall be to Yakima County Superior Court.

Councilman Tierney asked if environmental reviews appeals are always sent to the Hearing Examiner. The Community Planner stated in the past three or four years, they have been sent to the Hearing Examiner. Councilman Tierney asked why that has not been done at the Council level.

Councilman Larson explained that the Hearing Examiner's background in planning and law gives him more expertise than the average Council Member, as well as more objectivity. He noted the Hearing Examiner has served the City very well.

Councilman Tierney stated his personal observation, having sat in on the last Hearing Examiner hearing. He stated the City Supervisor, who serves as the SEPA Responsible Official, was absent throughout that whole hearing. He stated his belief that he doesn't think that we can get a good hearing if our official is deferring the responsibility to testify and make evidence in those hearings to support it. He said if the Council is going to do this, he thinks it should strictly be the responsibility of our City (SEPA) Official to be at the hearing. He stated that he watched Dennis (the Community Planner) at that meeting, and, frankly, there were some things that Dennis could not answer. He said he thinks that it is the responsibility of Mr. Sweet to be there and conduct that in the best interests of the City in a fashion that's going to create the best outcome.

City Supervisor Frank Sweet responded, with all due respect, that his decision was being appealed at the hearing, a decision which stands on the data that they had before them. He noted no one asked him to be there, and had anybody have desired him to be there, he could be easily approached. Nobody did. He stated that (in an appeal) it seems that the burden of proof is on the proponent who is trying to appeal it. He stated he was not going to change his opinion because somebody in the audience doesn't like what he did. He emphasized that his opinion was based on the facts that he had before him; those facts were presented to the Hearing Examiner, and if the Hearing Examiner had wanted him to testify, he could surely have contacted him.

Councilman Tierney told the City Supervisor that he was not available (that day). He said he looked, and the City Supervisor was not here.

The City Supervisor said he was not sure if the Councilman was keeping track of his time card, when he goes or when he doesn't go, but if somebody wanted him here to testify, he would be here. He stated he was never asked.

Councilman Tierney said he thinks it is in the best interests of the City to have the Official here.

Mayor Jones stated that is up to the Hearing Examiner; if he wants the Official here, then he'll be here. He noted that is what we pay the Hearing Examiner for.

Councilman Tierney said that is unfair to an employee like Dennis, to have him in a position where he may not be able to answer some questions.

Mayor Jones reiterated that if the Hearing Examiner needs Mr. Sweet's input, he can call on him.

Councilman Larson noted Mr. Tierney began his remarks by stating they were his "personal views," and stated it is his personal opinion that these "personal views" are what keep getting the Council in difficulty. He said the Council is made up of seven individuals with seven personal views.

Mayor Jones asked how many Council Members have served on a planning commission.

No one responded.

Councilman Overby stated the SEPA official has a lot of power. He said he thinks having Frank there getting a secondary chance to defend that decision could stack the deck in favor of the City, not giving the appellants the opportunity to bring in additional information. He said he would almost argue that it would be inappropriate to bring Frank in.

Councilwoman Nichols said she thinks it's appropriate to delegate it to a staff person and thinks it is appropriate to delegate the decision to the Hearing Examiner.

Mayor Jones praised the Selah Planning Commission, noting the qualifications of those who serve on that Commission.

Councilman Overby moved approval and Councilman Larson seconded.

Councilman Schmidt said he was a little confused when he read "This short plat was filed under an R-3 designation and falls short of a less than 1-acre requirement" and "This Short Plat violates applicable ordinance and is inconsistent with building code." He asked how that affects what the Council is trying rule on.

City Supervisor Frank Sweet stated it doesn't have anything to do with the decision before Council. That's what the proponents based their appeal on. He noted the Council's decision today is whether to give this issue to the Hearing Examiner, who will take all of the information, hold a public hearing, take testimony and make the decision.

Councilwoman Nichols asked if we give public notice of that hearing.

Mr. Sweet responded affirmatively.

Councilwoman Derrey asked if this decision would keep the issue from coming back on the Council.

Mr. Sweet responded affirmatively.

Roll was called. Council Member Schmidt – yes; Council Member Larson – yes; Council Member Overby – yes; Council Member Nichols – yes; Council Member Derrey – yes; Council Member Tierney - no. Motion carried, with Councilman Tierney casting the dissenting vote.

2. Resolution Approving Payment to Columbia Asphalt & Gravel, Inc. for Work Performed through May 30, 2008

City Supervisor Frank Sweet addressed Resolution M-2, which includes the progress report from Huibregtse, Louman on the South Park Drive Project. He noted the estimated completion date for South Park Drive is July 9, 2008.

Councilman Larson moved approval of the Resolution Approving Payment to Columbia Asphalt & Gravel, Inc. for Work Performed through May 30, 2008. Councilwoman Nichols seconded. Roll was called: Council Member Schmidt – yes; Council Member Larson – yes; Council Member Overby – yes; Council Member Nichols – yes; Council Member Derrey – yes: Council Member Tierney - yes. Support was unanimous.

The City Supervisor suggested the Council move to Ordinance N - 1 prior to moving into Executive Session. The Council addressed Ordinance Item N-1.

N. Ordinances

1. Ordinance Amending the 2008 Budget for Miscellaneous Expenditures

Clerk/Treasurer Dale Novobielski addressed the June budget adjustment for completion on the Police Station and property tax assessment. He stated those adjustments will come from the projected ending net cash investments in the General Fund. He stated adjustments in the planning department reflect the increased sub-division activity, and those funds are passed on in plan review fees.

Councilman Larson moved approval of the Ordinance Amending the 2008 Budget for Miscellaneous Expenditures. Councilman Tierney seconded. Roll was called: Council Member Schmidt – yes; Council Member Larson – yes; Council Member Overby – yes; Council Member Nichols – yes; Council Member Derrey – yes: Council Member Tierney - yes. Support was unanimous

Mayor Jones announced a 5 minute break before the Council moves into Executive Session for 30 minutes to discuss litigation.

The Council moved into Executive Session at 4:59pm.

The Council moved back into Regular Session at 5:34. The Mayor called the meeting back to order to consider Resolution M-3. Councilman Overby and Councilman Tierney left the Council Chambers.

M 3. Resolution Rejecting the Selah Planning Commission Recommendation of Denial of Selah Urban Growth Area Comprehensive Plan Amendment 2006-1 (South Selah Neighborhood); Adopting Findings and Conclusion; and Approving the Request for Comprehensive Plan Amendment 2006-1

City Attorney Bob Noe referred to the Findings of Fact and Conclusion included in M-3 noting they represent what he put together after discussing findings to support the oral decision of the City Council back on May 13. He asked the Council to consider these findings, to reflect on whether the findings are accurate with what they found based on the record, and, if so, go ahead and approve it; if not, or if there needs to be additional fact finding or additional review of the records, he'd ask Council not to approve it and to engage in additional evidence gathering. He noted Council is free to change its decision as well.

Mr. Sweet noted this is a Council decision and interaction will be allowed only among the Council.

Mayor Jones pointed out to the audience that Mr. Overby and Mr. Tierney have left the room, having recused themselves from this issue at the last meeting.

Councilwoman Nichols said she would like to make a motion to reconsider the Findings of Facts. She said what was apparent to her was the Council had received a lot of information and it was unclear to her what was fact and what was personal opinion. She moved to direct staff to analyze the information and to come back with factual information that Council received on this item, and her motion is to table this until the next Council Meeting, June 24. Councilman Larson seconded.

Councilman Schmidt added in a decision of this magnitude, he would agree with Councilwoman Nichols.

Roll was called: Council Member Schmidt – yes; Council Member Larson – yes; Council Member Nichols – yes; Council Member Derrey – yes. Motion carried unanimously.

O. Communications

1. Oral

P. Reports/Announcements

1. Mayor
2. Council Members
3. Boards
4. Departmental

Mayor Jones moved on to reports.

Councilman Tierney asked what is happening on salmon recovery.

The City Supervisor said he got a letter back from DFW and referred it to the City Attorney.

Mayor Jones presented certificates to City participants in the December 6, 2007 Water World Emergency exercise. He noted Selah is the only City in the valley that goes into a full-blown EOC. He passed them out. He further reported the Skatepark is under construction, and they will put ramps in next Saturday. Mayor Jones noted he donated 4 pallets of sod. He said it will be dedicated at 1:00pm June 12. He reported they are coming along well on Veteran's Park; the flag poles are up. He asked the Public Works Director when we can put the other two parcels at Hillcrest and Crusher Canyon up for sale.

Q. Executive Session

1. 30 minutes on litigation (held prior to consideration of resolution M – 3).

R. Adjournment

Council Member Larson moved, and Council Member Schmidt seconded that the meeting be adjourned. By voice vote, the motion passed unanimously.

The meeting adjourned at 5:45pm.

Robert L. Jones, Mayor

Paul Overby, Council Member

Summer Derrey, Council Member

Denise Nichols, Council Member

Herb Schmidt, Council Member

Keith Larson, Council Member

John Tierney, Council Member

ATTEST:

Dale E. Novobielski, Clerk/Treasurer