

Town of Coupeville
REGULAR COUNCIL MEETING
Tuesday, February 10, 2009
6:30 p.m.

PRESENT: Mayor Nancy Conard, Councilmembers Dianne Binder, Bob Clay, Ann Dannhauer, Molly Hughes, and Jim Phay.

STAFF PRESENT: Public Works Director Malcolm Bishop, Town Marshal Dave Penrod, Clerk Treasurer Judy Thomas

Meeting called to order at 6:50 p.m.

APPROVAL OF AGENDA:

Councilmember Dannhauer noted that there was no audience input on the agenda at the beginning of the meeting, only after the presentation. Mayor Conard noted she had omitted it due to the short agenda.

Council Action: A motion was made by Councilmember Clay, second by Councilmember Binder, to approve the agenda with one addition, to add audience input prior to the presentations. Motion passed 5-0.

APPROVAL OF MINUTES

The minutes of the regular meeting of January 27, 2009, were approved with one addition by Councilmember Dannhauer as follows: Page 3, last paragraph, second sentence, should read, 'She has been attending the library building meetings and they are on track cost wise, and are discussing...'.

AUDIENCE INPUT - No public input.

PRESENTATIONS

Decision Making: Quasi-Judicial and Legislative by Town Attorney Grant Weed

Grant Weed, explained that Washington Cities Insurance Authority (WCIA) encourages this training for Councils and Planning Commissions who deal with quasi-judicial decisions; and this training will meet one of the mandatory training requirements in the Town's Compact agreement with WCIA for 2009. Every year WCIA selects an audit topic and this year it is Land-Use Liability. He discussed the difference between Legislative vs. Quasi-Judicial.

Legislative: Is to legislate, to enact laws. Councilmembers are legislators, they are the legislative body which is given authority by the state constitution and state law to make local law.

Legislative examples are comprehensive plans and amendments; area wide zoning and rezones; enacting new critical areas ordinance, a new sign code or design standards. Legislative decision is the enactment of ordinance.

Quasi-judicial: Is to adjudicate, or act like a judge, to determine the rights of a party. The role of the legislator in a quasi-judicial role is to rule whether a specific land use application complies with the laws and plans. Quasi-judicial examples are to grant approval for: a subdivision or plat; a site specific rezone; a conditional use or special use permit; a binding site plan; or design approval. When processing quasi-judicial, the following applies: Appearance of Fairness Doctrine; No Conflicts of interest; No ex-parte communications, No non-record information,

Full disclosure. Due process public hearings are: On the record; Applicant burden of proof; Witnesses must be sworn in; Written decision on the record. A quasi-judicial decision is a written decision consisting of Findings of Fact and Conclusions of Law, usually in form of a resolution or ordinance for the specific application.

The legal backdrop in land-use decision making shall be: 1) Duty of fairness and trust; the conduct of government should always be scrupulously just in dealing with its citizens. 2) Land use decision making - follow the law, under the U.S. Constitution, 'No person shall be deprived of property without due process of laws; nor shall private property be taken for public use without just compensation.

In a quasi-judicial decision, your decision must be based on the Town Code. If it meets the criteria for approval you must vote for it unless you can identify how it doesn't meet the law or code; decision must be based on facts and evidence presented; must consider vested rights if the applicant. The application is vested when submitted and the Town is required to make a timely decision. Can't let citizen complaints/comments affect your decision; that is not a lawful criteria to base your decision; it is not a popularity decision

Hearings Examiner - Pros and Cons by Town Attorney Grant Weed

Mr. Weed explained that hearing examiners are used predominately for land use decisions and that WCIA strongly endorses using them (hearing examiners) for these types of decisions. Most hearing examiners are attorneys, who are specially trained and experienced with many jurisdictions and regulations; they are not elected officials and do not have the political influence or pressure. If the hearing examiner is the final decision maker, the council members have no influence on the decision and there is substantial reduction in potential legal damages claims against the town and/or the elected officials personally. When the Town Council makes a quasi-judicial decision and it is appealed; the court decides whether it was an arbitrary and capricious decision, and if it was, then the application must start over; and that promotes damages, costs time and embarrassment, and erodes public confidence. This can happen when not providing clear findings of fact and conclusions of law. If the decision making body ignores evidence or imposes personal judgment in those hearings on certain matters, that can land you (the town or the individual) in court as arbitrary and capricious, with suits for damages charged against you individually. WCIA does not cover intentional acts and if a judge finds that or you committed an unlawful act, you need to be prepared to pay.

Mr. Weed noted that Mike Walters, attorney with Keating, Bucklin & McCormack, has explained at trainings that he has defended between a 1,000 and 1,500 land-use cases, and all but about 10 of the cases were when a hearing examiner was not used in making land use decisions. Some of the reasons cities don't use a hearing examiner is because the hearing examiner doesn't live in community and doesn't know the history; the elected officials lose control, i.e. 'the voters elected us to serve the citizens and that is one of the reasons I ran for council.' The decision needs to be made based on the facts. The cost of a hearing examiner is another issue, but those who do this, are fairly reasonable priced; and what you pay on a hearing examiner will pale in comparison to attorney fees if there is a lawsuit. His experience has been that there are far greater claims against cities that don't use hearing examiners.

He gave some suggestions on hiring a hearing examiner, either through a request for proposals or getting recommendations from other cities or the county. He added that it is best to have the hearing examiner make the final decision, to reduce the risk. He responded to Councilmember

Clay's question about emails on quasi-judicial matters, that any emails received should be printed and provided to the Council at the public hearing.

Mr. Weed explained that that if a council member votes against a quasi-judicial issue, then they must state the reason and it must be consistent with town code; the findings of fact and conclusions of law are the blue print for your decision.

NEW BUSINESS

Approval of request for funds from Central Whidbey Chamber of Commerce (CWCC) - *Recommend approval of \$5,000 for Central Whidbey Chamber of Commerce Projects*

Councilmember Hughes explained that the request from CWCC for financial help with three projects: 1) Think Local First - to promote/support local businesses; 2) VIC stations at Wharf and Museum; 3) Business Workshops - to pay for speakers and educational materials.

Councilmember Clay suggested receipts be provided to the Town and reimbursement to CWCC. Councilmember Hughes suggested that \$1,000 of the request could come from the 2% Tourism fund (Fund 104) and \$4,000 from the General Fund.

Council Action: A motion was made by Councilmember Hughes, second by Councilmember Clay, to provide up to \$5,000, on a reimbursable basis, to Central Whidbey Chamber of Commerce for the work plan outlined in their February 2, 2009 application. The motion passed 5-0.

AUDIENCE INPUT

David Day (Town Planning Commission Chair) spoke about the presentation and explained that if people don't like the rules, then the place to change the rules is through the legislative process. The idea of the hearing examiner gives the legislators more time to develop rules and regulations that are good for the community; then those are the rules that have to be adopted (and used by the hearing examiner). He added that he appreciated that aspect of the presentation.

Mayor Conard noted that she has submitted some dates in March to CTED for the Short Course on Local Planning and she will be inviting the cities of Oak Harbor and Langley, and Island County to attend the training session.

ADJOURNMENT: 8:55 p.m.

Respectfully Submitted:

MAYOR:

Judy A. Thomas, Clerk Treasurer

Nancy Conard, Mayor