

City of Brookings

SPECIAL MEETING Minutes

CITY COUNCIL

Wednesday, June 29, 2011

City Hall Council Chambers, 898 Elk Drive, Brookings, OR 97415

Call to Order

Mayor Anderson called the meeting to order at 7:00pm.

Roll Call

Council Present: Mayor Larry Anderson, Councilors Ron Hedenskog, Dave Gordon, Jake Pieper, and Brent Hodges; a quorum present.

Staff Present: City Manager Gary Milliman, Planning Director Dianne Morris, City Attorney Martha Rice and City Recorder Joyce Heffington.

Others Present: Curry Coastal Pilot Reporter Steve Kadel and approximately 7 public.

Public Hearing

The public hearing was opened at 7:02pm in the matter of File No. APP-1-11/CUP-1-11, an appeal of a conditional use permit for a retail business in an Industrial Park (I-P) district, Shannon Werner, appellant. The applicant is Bi-Mart Corporation.

Under exparte:

- Mayor Anderson said that he was familiar with the location, but had not visited the site specifically and that Nathaniel Werner, husband of the appellant, whom he's known for 20 years, had twice attempted to discuss the matter with him, once in front of the Post Office and once in the City Hall Parking lot. On both occasions, Anderson said, he'd had "absolutely no discussion on this matter," with Werner beyond telling him that he could not discuss it.
- Councilor Pieper stated that he'd had past site visits, but not since the Bi-Mart issue had come up. He said he's known Nathaniel Werner for several years and had also conducted business with his employer. Pieper said that Werner had visited him at his place of business two or three times with the bulk of their conversations being "less about this specific issue and more about the overall philosophies of business and what chain stores can do to small towns." Pieper said that he couldn't recall much about the conversations except that he had been "listening more than offering opinions," and had explained to Werner the process and the opportunities he would have to voice his concerns.
- Councilor Hedenskog stated that he had site familiarity typical to any other resident and Councilor Gordon said that he had driven by the site.
- Councilor Hodges said that he drives by the site several times a day and that he'd had three conversations with Nathaniel Werner, one at the school, one at Werner's place of business and one at his place of business, primarily about the general impact of big stores on small towns. He also said that he had talked to Werner about the process.

No questions were asked regarding the exparte contacts.

Hearing no declarations of conflict or personal interest, nor objections as to jurisdiction, Mayor Anderson reviewed the guidelines and entered Exhibits C and D into the record.

Planning Director Morris reviewed the staff report, addressing the conditions of approval, the appellant's concerns, Bi-Mart's responses and the contents of Exhibit D.

Councilor Hedenskog asked Director Morris about non-conforming residences, on-street parking, the height of shrubs in the parking lot, and if the plot plan provided for lighting. Morris replied that the site is zoned industrial and existing residences can remain but no new residences can be added. She also explained that the spaces designated 'No Parking' were a condition of approval to improve visibility for ingress and egress onto Railroad and Cove, and that shrub height of a minimum of three feet with a tree every six feet is required in conformance with parking lot standards. A lighting plan was required, Morris added. Hedenskog then asked if Bi-Mart would be held to the lighting plan as a condition of approval and Morris said they would.

Mayor Anderson asked about existing street lights and Director Morris replied that there were two existing street lights and that as a condition of approval (COA), additional street lights would need to be provided as required by the City Engineer.

The applicant, John Harris, President of Bi-Mart, 86410 Pine Grove Road, Eugene, Oregon, said that he had nothing to add.

Speaking on behalf of the appellant, Jeremiah Scannell, Attorney, P.O. Box 7455, Brookings, said that his clients were not opposed to development but were "opposed to development that continues on at a pace that seems to ignore concerns of local residents," and this is their final opportunity to voice their concerns.

Exhibits E, and F, submitted by Scannell on behalf of the appellant, were entered into the record.

In general, Scannell said his client's concerns related to the greenway, ambient lighting, traffic noise and traffic congestion. His client's specific concerns, Scannell said, were that the lighting plan was inadequate, the traffic study was based on insufficient evidence, and that the proposed fencing was inadequate to shield their residence from lights and car noise. The Werner's, he said, "would be appeased" with the elimination of the 12 parking spaces adjacent to their property and the retention of the greenway, as it exists, or, alternatively, with the installation of a six foot block wall adjacent to the 12 spaces.

Mayor Anderson stated for the record that he had allowed Scannell to speak for close to 15 minutes, as opposed to the prescribed five minutes he was allotted.

In rebuttal to the appellant's testimony, John Harris said that the property is zoned Industrial Park and asked Director Morris if she would provide a list of more intense, outright uses which would be allowed for the property. Morris cited transfer companies, storage yards, warehousing, trucking and rental equipment companies, automobile, truck and boat sales as being outright uses. Harris then said that Bi-Mart had worked very hard to take all factors into consideration and that their lighting diagram is very good. For the most part, Harris said, customers would park in front of the store, which is away from the residential area, and that the 12 parking spaces in question would primarily be used by employees who will come and go infrequently. Harris went on to say that Bi-Mart should be allowed to put in as many

spaces as possible to provide customers more flexibility. The fencing, he added, would be sight obscuring.

Councilor Hedenskog said the proposed vegetation and slatted cyclone fencing would still allow some sound and light to go through, and asked if Bi-Mart would be opposed to putting in a concrete block wall. John Harris said they would not be opposed. Hedenskog then asked Director Morris if any outright uses would be required to provide mitigation; Morris said, no, they would not.

In response to the appellant's testimony, Director Morris pointed out that there is a lighting plan included in the packet, and that lights would be turned off 30 minutes after store closing. She added that ODOT had stated that, at this time, there would not be enough traffic generated at the location to elevate concerns related to traffic congestion.

Councilor Hedenskog commented that the traffic study had not been based on a single weekend, and Director Morris concurred, adding that the studies are performed throughout the year during peak and other times.

There were no requests for additional time to present additional testimony and the hearing was closed at 8:09 pm.

During deliberations, Mayor Anderson asked Director Morris to review the noise ordinance and the process used to ensure that a project is completed to plan. Following Morris' review, Anderson pointed out that other property uses have resulted in similar issues, including issues related to property that he owns. "But," he said, "these things have to go some place." Looking at Bi-Mart's plan, Anderson said, "I was quite impressed with it," and added that he thought it would complement the City as a whole.

Councilor Gordon said that he was impressed with Bi-Mart's approach in addressing the appellant's concerns and applauded Bi-Mart's "good neighbor" intentions. Gordon also pointed out that, based on the zoning, other more invasive uses could have gone into this location without any mitigation being required.

Councilor Hedenskog said, since this would be a conditional use in an Industrial Park zone, staff would be looking at it, at least annually, and asked Director Morris if this was correct. Morris said that the use would run with the land, and as long as the conditions are met, there would be no reason for staff to review it again. Hedenskog then asked, should a condition not be met, if the applicant would be required to rectify the situation and Morris said they would. Hedenskog went on to review what had been done to address the appellant's concerns, and concluded that the only issue left to be addressed was that of light coming from vehicles parking in the 12 spaces directly across from the appellant's residence. Hedenskog asked if Council would consider adding a block wall to be located adjacent to the 12 spaces, and/or that the 12 spaces be designated as employee parking only, as a COA.

Councilor Pieper asked about the specifications for fence height along the 12 spaces. Director Morris said that the fence would need to be four feet in height and site obscuring. Pieper pointed out that he too had to deal with issues related to commercial activities, but had to live with these issues because he'd bought his home in a downtown zone. "The appellants," he said, "aren't the only ones with property rights and Bi-Mart has the right to use this property to the best of their ability." He added that he thought the project and conditions of approval were acceptable, as is.

Councilor Hodges said that if he lived where the Werner's lived, and Bi-Mart was willing to put in the block wall, that this would be his choice.

Councilor Gordon also agreed that the block wall would address this last concern, if Bi-Mart was willing to put one in.

Mayor Anderson asked John Harris if Bi-Mart would be willing to put in the block wall and Harris said they would. Anderson then asked if the vegetation requirement would still apply and Director Morris said that it would, and added that putting the block wall behind the vegetation would be more appropriate.

City Manager Milliman suggested language to add the requirement for a four foot high block wall and Councilor Hedenskog said he would prefer that the wall be six feet in height.

Mayor Anderson asked Harris if six feet would be an acceptable height and Harris said that it would not as additional engineering would be required. Due to the elevation at the subject location, he added, a four foot high wall should satisfy the need for blocking headlights and engine noise.

Councilor Hedenskog moved, a second followed, and Council voted unanimously to deny the appeal in this matter, APP-1-11, issued for CUP-1-11 and uphold the Planning Commission's condition of approval based on all of the criteria and evidence that we've received in writing and in this hearing, today, and to [revise] the wording in page 81 [of the packet], #3, , off-street parking requirements, [of the Conditions of Approval] to include a four foot high concrete wall, to be blocked...or... concrete in nature...for the area of the southerly, most southwesterly 12 parking spaces, and to direct staff to prepare final order and findings of facts for Council approval.

Councilor Hedenskog moved, a second followed, and Council voted unanimously to accept final order, findings and facts for CUP-1-11, and Conditions of Approval which also include the alteration as mentioned [in the previous motion] to #3, page 81, [of the packet], four feet high, concrete in nature, wall.

Adjournment

Councilor Gordon moved, a second followed and Council voted unanimously to adjourn by voice vote at 8:46pm.

Respectfully submitted:



Larry Anderson, Mayor

ATTESTED:
this 9th day of August 2011:



Joyce Heffington, City Recorder