**MINUTES**
**RICHLAND PLANNING COMMISSION MEETING No. 8-2014**
Richland City Hall – 550 Swift Boulevard – Council Chamber
**WEDNESDAY, August 27, 2014**
**7:00 PM**

**Call to Order:**

**Chairman Utz** called the meeting to order at 7:00 PM

**Attendance:**

Present: Commissioners Berkowitz, Boring, Clark, Jones, Madsen, Wallner, Wise and Chairman Utz. Also present were City Council Liaison Phil Lemley, Deputy City Manager Bill King, Development Services Manager Rick Simon, Senior Planner Aaron Lambert and Recorder Penny Howard.

**Approval of Agenda:**
**Chairman Utz** presented the August 27, 2014 meeting agenda for approval.

**The agenda was approved as presented.**

**Approval of Minutes**
**Chairman Utz** presented the meeting minutes of the July 23, 2014 regular meeting for approval.

**A motion was made by Commissioner Boring and seconded by Commissioner Berkowitz to approve the meeting minutes of the July 23, 2014 regular meeting as written.**

**THE MOTION CARRIED BY UNANIMOUS VOICE VOTE.**

**Public Comment**

**Chairman Utz** opened the public comment period at 7:03 PM.

**Brady Bratcher, 3131 West Lewis, Phoenix, AZ:** Shared concerns, along with co-workers employed by Nehemiah Rebar Services, some of whom went on strike. The CEO of the preferred freezer company was recently made aware and planned to review the situation. **Mr. Bratcher** stated that the workers experienced low pay, less than promised wages, inadequate breaks, less pay than employees from California, verbal abuse from the Foreman, threats and intimidation after workers stood up to their

management, no safety training, no safety equipment, and were repeatedly pushed to increase production. There were possible EEOC violations and discrimination. He requested the assistance of the Planning Commission to explore the issues and assist. **Mr. Bratcher** reported that federal charges were filed with the National Labor Relations Board for discrimination against Nehemiah Rebar Services and Victory Unlimited, the general contractor. He stated that there were several other charges against Nehemiah Rebar Services as well.

**Chairman Utz** informed Mr. Bratcher that while the Commission might not be the correct forum, their concerns would be passed by City staff to appropriate contacts.

**Carlos Obeso Valenzuela, 1928 Yakima Street, Pasco (interpreted by Mr. Ramirez):** Stated that he worked for the Nehemiah Company where he was paid low wages and the following were not received: promised wages, training, safety equipment and safety training.

**Eduardo Ramirez, 2410 West Ella St, Pasco:** Stated that he worked for the Nehemiah Company, was never paid the wages promised or given safety training, and was required to work 10-12 hours with one break and one lunch, which he found particularly difficult on days when the temperature was up to 114 degrees.

**Chairman Utz** closed the public comment period at 7:09 PM.

## PUBLIC HEARING

**Public Hearing Explanation: Ms. Howard** explained the public hearing notice and appeal process and asked Commissioners to identify any conflicts of interest, ex-parte contact or any other appearance of fairness issues.

### New Business

1. **APPLICANT: BRIAN & CATHY KEELE (Z2014-102)***
   **APPROVAL OF A ZONE CHANGE OF APPROXIMATELY 1.4 ACRES FROM C-1 NEIGHBORHOOD RETAIL TO C-3 GENERAL BUSINESS AT THE SOUTHEAST CORNER OF QUEENSGATE DRIVE AND JERICHO ROAD**

**Mr. Lambert** presented the staff report for the rezoning request, discussed the undeveloped site and displayed several maps and aerial photographs. Access to property is expected to come from Jericho Road, but that has not been proposed.

**Chairman Utz** opened the public hearing at 7:18 PM.

**Applicant, Brian Keele, 27421 N. 385 PR NE, Benton City:** After growing flowers in a greenhouse in their backyard and selling flowers in a parking lot, expressed a desire to

sell the plants and produce on the proposed property. **Mr. Keele** shared a variety of images of the property while describing his vision.

**Harold Gelpin, 1933 Jericho Road:** Stated that he had no problem with the scope of the proposed business.

**Chairman Utz** closed the public hearing at 7:25 PM.

**Discussion:**

**Commissioner Wise** asked for clarification of the zoning of surrounding properties and about possible future uses of the property. **Mr. Lambert** confirmed the C-1 and C-3 zoning areas and explained that 1.4 acres would not work very well for typical C-3 uses, even if combined. The County did not have a comprehensive plan available, but commercial development was a future possibility.

**Commissioner Boring** saw no problem with the Keele proposal, but suggested a development agreement that might prevent intrusive large commercial use of a combination of parcels that could occur in the future. **Mr. Lambert** stated that a recommendation for a development agreement could be forwarded to prohibit certain uses or apply C-1 setbacks to the property.

**Commissioner Boring** noted the 10 foot wide trail planned by the Parks Department and asked if there would be an 8 foot sidewalk in addition to the trail or within the trail. **Mr. Lambert** expected consistency with the Keene Road frontage, but deferred to Public Works where the development review for sidewalks would occur.

**Commissioner Berkowitz** inquired if the proposed development was not completed, would the property revert back to C-1 zoning. **Mr. Lambert** discussed possible limited commercial uses in C-1 in the future, but believed the development agreement was a better avenue for commercial limitation at this time. **Commissioner Berkowitz** reminded all that the Jericho Bike Path was on the Transportation Improvement Plan.

**Chairman Utz** summarized the desire to modify C-1 zoning in the future, while using a development agreement in order to move the outstanding application forward. **Mr. Lambert** concurred.

**Chairman Utz** discussed the location of the sidewalk and/or bike trail along Keene Road and pointed out that it might be desirable to move the pedestrian traffic farther away from the road.

**A motion was made by Commissioner Madsen and seconded by Commissioner Jones to concur with the findings and conclusions set forth in Staff Report Z2014-102 and recommend approval to the City Council of the request to rezone**

**1.39 acres located at the southeast corner of the intersection of Queensgate Drive and Jericho Road to C-3, General Business zoning**

**An amending motion was made by Commissioner Boring and seconded by Commissioner Wise to ask staff to prepare a development agreement to limit certain more intensive uses.**

**THE AMENDING MOTION CARRIED 8-0.**

**THE MOTION CARRIED 8-0.**

2. **APPLICANT: CITY OF RICHLAND (Z2014-105)**
   **ZONING TEXT AMENDMENTS – ADDITION OF A NEW RMC SECTION 23.08.100 - BANNING MARIJUANA USES CITYWIDE**

**Mr. Simon** presented to staff report for a proposed code amendment that would prohibit marijuana retail sales, processing and production within the City. After Initiative 502 passed, the City Council put a moratorium in place on marijuana uses and State Attorney General authored an opinion that while municipal governments are authorized to permit marijuana uses, they are not mandated to permit such uses within their jurisdictional boundaries. **Mr. Simon** reported that the only applications for licensing marijuana uses to date within the City were rejected by the Liquor Control Board for non-compliance with the licensing criteria. He also reported that federal law classifies the possession and use of marijuana as a felony and pointed out that as future court decisions occur and laws change, there may be a need to revisit the issue.

**Chairman Utz** opened the public hearing at 7:42 PM. With no one wishing to speak, the public hearing was closed at 7:44 PM.

**Commissioner Clark** asked if the uses of marijuana were all inclusive. **Mr. Simon** explained that the prohibition was related to land use that would result in the sale, processing or production of marijuana, but would not affect an individual's right to use marijuana.

**Commissioner Wise** pointed out that the City of Richland belongs to the Nuclear Communities group, whose newsletters may have inferred a less reliable workforce in the State of Washington due to the legalization of marijuana.

**Commissioner Boring** expressed concern for citizens who voted for the legalization of marijuana, but believed there were more cons than pros at this time.

**Commissioner Berkowitz** discussed the changing zoning regulations that would allow uses in certain as opposed to a ban and possible future modifications as laws are changed. **Mr. Simon** stated that future rulings would very likely require additional discussions and code changes. **Commissioner Berkowitz** stated her disagreement

with the ban, especially when it could make it more difficult for medical marijuana users to obtain marijuana.

**Commissioner Madsen** expected more public participation, but did not find the article in the Tri-City Herald. He believed there was good cause to ban marijuana and believed the City voted against the Initiative.

**Chairman Utz** suggested that it may be wise to avoid leading the nation on this issue and supported the proposal.

**A motion was made by Commissioner Madsen and seconded by Commissioner Wallner to concur with the findings and conclusions set forth in Staff Report (Z2014-105) and recommend to the City Council adoption of the new Section 23.08.100 of the Richland Municipal Code – prohibiting marijuana uses.**

**Discussion:**

**Commissioner Clark** suggested that the verbiage limiting usage must be very specific.

**Commissioner Boring** pointed out that other cities that have banned marijuana uses have been sued and was not completely comfortable making this decision.

**THE MOTION CARRIED 6-1.**
**Commissioner Berkowitz voted against and Commissioner Boring abstained.**

3. **APPLICANT: CITY OF RICHLAND (Z2014-106)**
   **ZONING, SUBDIVISION & SHORELINE TEXT AMENDMENTS**
   **IMPLEMENTING A HEARING EXAMINER SYSTEM CITYWIDE**

**Mr. Simon** presented the staff report of the proposed amendments to the Richland Municipal Code, Titles 23, 24 and 26 to implement a hearing examiner system of land use permit review. He explained that a Hearings Examiner would review the bulk of the land use applications, but the Planning Commission would act on permit applications for certain district uses and amendments to the City's zoning and/or subdivision regulations. The Board of Adjustment would continue with zoning, variance and some special use applications. **Mr. Simon** proposed the removal of section 24.24.060 - Fees and Deposits, which is addressed elsewhere in the code, and handed out a supporting document.

**Chairman Utz opened and closed the Public Hearing 8PM, with no one wishing to speak.**

**Commissioner Wise** asked if there was a procedure in place in case the hearing examiner needs to be recused and if they would provide an annual report as in other cities. **Mr. Simon** explained that the provisions were included in the Title 19

amendments that were reviewed at the last Council meeting, but not part of the hearing at hand.

**Commissioner Wise** provided a letter regarding: Results of further research stimulated by the letter of Mike Walter, Attorney at Law, provided to the Planning Commission for our Hearing on Hearing Examiners on August 27, 2014. He summarized his conclusions in the letter stating: 1) Mr. Walter has promoted the use of Hearing Examiners to cities in Washington State for over a decade aligned with the WCIA and his presentations were almost verbatim with previous presentations. 2) That the individuals who designed the system were also paid to defend it. 3) Eventually, the City of Richland could successfully transfer to a Hearing Examiner system but not this one and not at this time.

**Commissioner Madsen** attended City Council for the first reading, read Mr. Walter's letter and found it to be prejudiced. He hoped that Commissioner Wise's efforts were recognized, reviewed and taken to heart. **Commissioner Madsen** did not see any reason to go to a hearing examiner system when the system currently in use worked.

**Commissioner Jones** was disappointed with the bias of Mr. Walter's letter and strongly recommended its omission or that a documented counter argument from another legal expert be included. He felt the city was being pushed with one-sided information and therefore, would vote against.

**Mr. King** stated that Commissioner Wise's letter was forwarded to the City Council. He also informed all that Mr. Walter did not take part in drafting the code. **Mr. King** stated that although Mr. Walter had a strong opinion in the matter, he did not believe there was any personal gain and the opposite could be argued.

**Commissioner Clark** attended last Tuesday's City Council meeting and reported that a Council member implied that he didn't know how things were done and needed to be elected to the Council if he wanted to have a say in how the City was run. Other Council members reassured Commissioner Clark that public interest and comments were welcomed and considered.

**Commissioner Clark** inquired about the next steps in the process of going to a hearing examiner system. **Mr. King** stated that the recommendation would go on to Council and they would make a decision. There were several pieces that needed to be put in place prior to that transition. He also noted code sections that may need to be amended in a consistent manner were Titles 2, 19, 23, 24 and 26.

**Commissioner Boring** shared that she was not averse to hearing examiner system, but due to past experience had some concerns about all of the quasi-judicial items being handled in that manner. She shared that there had been hundreds of times where her opinion on an issue was changed after hearing information directly from the opponents and proponents. In her personal experience, hearing examiners tend to run hearings like a court and she feared that the intimidating environment would result in

lost opinions and the lost voice of the citizen. She stated that she believed opinions should be heard and citizens had a right to be heard.

**Commissioner Boring** specifically disagreed with a section of Mr. Walter's letter that stated the following:

> '*Property- or site-specific land use approvals and decision-making should not be done based on citizen comment, policy criteria, planning criteria or constituent desires.'*

She disagreed with the statement saying "We are a community and I believe the citizens have a right to be heard." If the citizens were taken out of the decision making process, she hoped a very good hearing examiner was chosen. **Commission Boring** understood the rationale and desire to lessen liability.

**Commissioner Wise** offered an example from the evening's meeting with much consideration and an improved result rather than a strict code interpretation. He agreed with Commissioner Boring and thought a good hearing examiner system could be crafted here that would reflect the needs and desires of the City of Richland, but the hearing examiner was a blunt instrument.

**Commissioner Madsen** read the following paragraph from Mr. Walter's letter:

> *'Use of a hearing examiner frees up city council and planning commission time for other, important planning, goal setting and law-making functions; and, provides good customer service.'*

He strongly disagreed with the statement that good customer service was provided, especially after putting heart and soul into Commission activities.

**Chairman Utz** shared his fundamental perspective that our political system is for the people, by the people and of the people. He opined that the Commissioners were an amazing group of very different people with different approaches, political philosophies and life philosophies which is what citizen representation was supposed to be. Being passionate about their views and disagreeing with one another helps them produce a better result.

**Chairman Utz** noted that our current government was one of the lowest rated governments in history, while pointing out that very few citizens were involved in it today. He described the Commission as a place where citizens volunteer, work hard, do their best, listen to each other and as a result have a good process with good results for the citizens. He recognized the desire to avoid law suits, but stated that government is supposed to be messy and the bigger issue was people suing instead of discussing and resolving issues.

**Chairman Utz** continued by saying the Planning Commission has done a great job of trying to make the city a better city. He found this process very disheartening. There was a need for communication between the Planning Commission and the Council. **Chairman Utz** shared his experience going before the Council twice to request further

discussion with the Planning Commission on this topic. He stated that he never felt worse making a simple request for two groups, which were supposed to work together, sit down for a discussion. The process should take time, yet it seemed to be a rush to get this done as though there's an important end date. It seemed incorrect.

**Chairman Utz** offered the example of telling a group of employees, after working hard and doing a good job that they were going to be replaced. They would sit down, provide an explanation describing the changes and ask for input. He stated that was not the situation here where, for well over fifty years, citizens have gotten together to work on issues.

**Chairman Utz** stated, "This, quite frankly, is an amazing town. " "In cities where this has been brought in, there is no citizen participation." He opined against the hearing examiner because if people decide that it's not their job to do the hard work and not their job to show up, then we end up with a city that is not as good.

**A motion was made by Commissioner Boring and seconded by Commissioner Madsen to concur with the findings and conclusions set forth in Staff Report Z2014-105 and recommend to the City Council approval to the proposed amendments to Titles 23, 24 and 26 of the Richland Municipal Code – implementing a hearing examiner system to include the deletion of code section 24.24.060-Fees and deposits.**

**Commissioners Madsen, Clark and others** appreciated and thanked Chairman Utz for his eloquent and heartfelt comments.

**THE MOTION FAILED 0-8.**

## Communications:

**Mr. Simon**

- Reminded all that the packet included an invitation to a Planning Short Course on September 16th in Pasco. The courses are free, a good opportunity and staff would process reservations.

**Mr. King**

- Appreciated the discussion on the hearing examiner. He assured all that public hearings and citizen participation is still a hallmark and will continue to be a part of the process.
- Stated that the Planning Commission has an important, even critical role because the laws and policies that govern development still go before them.
- Announced another form of training for Open Public Meetings and Records Management would soon be available for those who weren't previously able to attend.

**Commissioner Jones**

- Clarified training course information.

**Commissioner Madsen**

- Commented that he recently learned that the hospital was completely full and often ran that way. Kadlec plans to add another 4 stories to the tower building and also bought the 780 building. The concept of a medical mall would be blossoming and it would be good for the City.

**Commissioner Boring**

- Appreciate all of the comments regarding the hearing examiner and hoped they would not fall on deaf ears.

**Commissioner Wise**

- Provided feedback from the setback change affecting side yards last month by stating the change has sent the Homeowners Association in his neighborhood into disarray. Extended fences were causing issues amongst his neighbors.

**Chairman Utz**

- Suggested pictures of the fencing in Commissioner Wise's neighborhood would provide helpful feedback.
- Noted that the challenge with people who write the code with no involvement in its practical application means that immediate feedback from decisions made is simply not available.
- Noted the emotional attachment to the public hearing examiner issue and commended all for their discussion.
- Assured all that the Commissioners would be on their best behavior should the City Council desire to meet and discuss the hearing examiner system.
- Suggested adjourning to a workshop in the Conference Room.

**ADJOURNMENT:**

The August 27, 2014 Richland Planning Commission Regular Meeting 7-2014 was adjourned at 8:43 PM. The next regular meeting of the Planning Commission will be held on September 24, 2014.

PREPARED BY: Penny Howard, Recorder, Planning and Development

REVIEWED BY: _____

Rick Simon, Secretary
Richland Planning Commission