

SPECIAL CITY COUNCIL MEETING
February 19, 2008

The Special City Council Meeting was called to order by Mayor Muschell in the Council Chambers in the City Hall at 6:00 p.m. The proceedings were as follows:

Present: Council Members Riddle, Boardman, Lepp, Tebo, Sangster and Muschell

Absent: Councilman Charboneau

Mayor Muschell stated that the purpose of the Special City Council meeting is review and discussion regarding an amendment to the Zoning Ordinance to allow compliance review by the City Council of use permits approved by the City Council, as opposed to the Zoning Administrator.

City Manager McNeil clarified that Council will not be deciding tonight with regard to the special use that was approved for the Preseau Fish Market, explaining that is not the purpose of this meeting. He explained that the purpose of this meeting is to review the method by which issues such as the special use that was approved for the Preseau Fish Market will be reviewed, and other issues relative to the Zoning Ordinance that have been discovered as he and the City Attorney have researched this issue.

City Attorney Charles Hoffman referred to his three-page written opinion provided to Council with regard to the role of Council in conditional uses and uses of similar character issues. He commented that he researched all the national volumes of statutes and case law, and concluded that the language used in the ordinances concerning uses subject to special conditions, uses of similar or no more objectionable character, and uses of similar character are conditional uses – conditional because the use is conditioned upon the approval of Council. Mr. Hoffman explained that Council can also add conditions to the conditional use, which are all a variety of the special use. He noted that under the City Ordinances are special uses that are allowed within certain districts. Mr. Hoffman also explained that if someone applies for a use and Council categorizes that as similar character, Council is in effect legislating at that time. When the Zoning Ordinance was initially adopted, certain uses were listed but this Zoning Ordinance is roughly forty years old and all possible uses are not listed. He added that the standards require that the use be of similar character to those uses allowed in that district and Council must also be sensitive to the environment and other standards that are public services such as general public health, safety and welfare. If the use belongs in that particular district, then Council is carrying out their legislative function in the same manner as in the beginning when the Ordinance was adopted except another use is being added to the Ordinance. Mr. Hoffman added that if special conditions are desired, those special conditions should be made clear and put within the decision so that from an enforcement standpoint, the Zoning Administrator has something to work with as it should be the Zoning Administrator's function to enforce those conditions. In this instance, the statute allows Council to review these matters and change those conditions just as with the Preseau situation. Mr. Hoffman stated that if the Zoning Administrator initiates an enforcement proceeding because he does not feel that Council's directives and conditions that were set forth are being complied with, then what he proposes in this opinion is that the Zoning Administrator's power to modify be taken away; that the provision pertaining to modification in the Ordinance be eliminated because the statute gives the approving body the power to revisit the issue. Mr. Hoffman stated that in the process, the Zoning Administrator started an enforcement action in motion and will give the permittee the right to petition the City Council prior to the established hearing date, to re-review the matter. If the permittee wants the Council to review the initial ruling and maybe change its mind as to

the conditions, then he or she has the power to come before Council with that request. If not, then the Zoning Administrator would proceed with enforcement.

Mr. Hoffman noted that there are various other sections in the Ordinance that allow similar character to either be determined by the Zoning Administrator, Planning Commission, or the Planning Commission and the City Council. An area of concern is where Planning Commission approval under the Ordinance is required as well as Council approval. He stated that the City Council is the legislative body and as such, is responsible for determining which uses belong in which particular district. Mr. Hoffman recommended that the Planning Commission should be more advisory in all these similar use situations and that Council should be the deciding body and should retain the power to revisit these issues upon the request of the property owner after enforcement proceeding is initiated. He also recommended that language be changed in various sections of the Ordinance to follow that format and remain consistent.

Mr. Hoffman recommended that meticulous records be maintained so that the Zoning Administrator can refer to the information for enforcement or if a similar instance presents itself. He commented that Council can set conditions of special uses and those conditions should become part of the zoning compliance certificate or permit that the zoning official issues.

Mr. Hoffman stated that another issue is the authority provided to the Zoning Board of Appeals, such as power over the Planning Commission and City Council. He explained that appointed officials should not be given power to overrule Council, or a body that is responsible to the electorate. He recommended that the Ordinance be modified to reflect that the Zoning Board of Appeals does not have the power to overrule the City Council or Planning Commission on similar or conditional use issues.

Councilman Tebo commented on the amount of work to update the Zoning Ordinance to meet today's standards. Mr. Hoffman stated that the Ordinance should be consistent in all the chapters and classification areas of the Zoning Code where there is any similar use language. He noted that some sections allow the Zoning Administrator to make determinations, some allow the Planning Commission to make determinations and in this particular instance the Ordinance mandated that the City Council and Planning Commission make a determination. Mr. Hoffman recommended consistency in that the Planning Commission advises and the City Council approves, and the City Council is the reviewing body of its own decisions. Additionally, at no point should the Zoning Board of Appeals have the authority to review any decision of Council or advisory opinion of the Planning Commission.

Councilman Tebo noted that when a permit is issued, the permit should include a copy on file of the exact specifications so that there is no question on what is implied. Mr. Hoffman stated that currently, the requirement in the statute is that Council's decision be specific and that the decision be kept on file. If it is Council's desire or the Zoning Administrator to incorporate that information into the permit, that is also a good idea because the wording is a written record for reference.

City Manager McNeil commented that based on the experience he has gained and his recent research with Mr. Hoffman, he recommends as a process of his administration as Zoning Administrator that any special use approved by Council will be provided in the form of a document or form of a permit and returned to Council for final review and approval of that particular document. He noted that the document would be kept on file at City Hall and a copy provided to those that are subject to the

special use approval of the legislative body. Mayor Muschell commented that would be consistent legislation on the part of the City Council.

City Manager McNeil recommended that based on research and the information presented by Mr. Hoffman, all issues relative to special use be made a legislative decision, and thereby removing the Planning Commission and Zoning Administrator from that process. Additionally, interject in the enforcement section, the ability of those uses that are approved by the legislative body to be reviewed by the legislative body; the ability to revoke would remain in the hands of the Zoning Administrator. Furthermore, modify the Zoning Board of Appeals Ordinance to ensure that the final word on any legislative action with regards to special use is with the City Council and not the Zoning Board of Appeals. Councilwoman Riddle clarified that the authority of the Zoning Administrator to revoke pertains to instances of non-compliance with what the City Council has designated and is not overriding anything that Council has determined. Mr. Hoffman indicated that is correct. City Manager McNeil added that decisions of the Zoning Administrator can be appealed to the Zoning Board of Appeals.

Councilman Tebo moved to incorporate the recommendations of Mr. Hoffman and City Manager McNeil. Seconded by Councilwoman Lepp. (Mayor Muschell – motion to authorize the City Manager and City Attorney to put into effect the discussions that were recommended tonight.) Motion carried unanimously.

Mr. Boyea questioned what portion of the Preseau Fish Market pertained to similar use or similar character. City Manager McNeil stated that as he recalls there were two different similar character uses that were approved relative to the Preseau Fish Market. Initially, there was a series of uses submitted in a letter that was reviewed by the City Council and approved, and then a subsequent use and another condition with regard to smoking fish in particular. Mr. Boyea noted the gift shop. City Manager McNeil commented that the gift shop was one of the uses considered in order to make that determination. Mr. Boyea asked when a decision will be made on the Preseau Fish Market issue and whether the decision would be made under the old Ordinance. City Manager McNeil stated that the Zoning Ordinance will be adjusted and that he would proceed according to the new Ordinance. Also, the petition information Mr. Boyea submitted has been provided to Council.

Adjournment

Councilwoman Lepp moved to adjourn the meeting at 6:32 p.m. Seconded by Councilman Tebo. Motion carried unanimously.

Mayor James Muschell

City Clerk Kenneth J. Kwiatkowski

Councilman Richard B. Sangster

Councilman Gerald R. Boardman

Councilwoman Winifred L. Riddle

Councilman Charles Charboneau

Councilman Leslie A. Tebo

Councilwoman Theo Lepp