

## FOOD CARTS: Council declined to intervene on staff decision

*Continued from page 1*

the planning decision was made.

The council had requested that City Attorney Steve Bryant weigh in on legal questions surrounding the issue. He provided them last week with a five-page letter responding to a series of questions on the matter, concluding that the application by then-mayor Brad Boyd had been handled correctly; that there is no legal basis for changing the decision; and that the City could be exposed to litigation if it attempted to do so.

Councilors were to review the letter prior to their regular Thursday-morning workshop, and they accepted its findings without questions or comments. (*The letter accompanies the online version of this story at [www.nuggetnews.com](http://www.nuggetnews.com).*)

The speed with which the matter was dealt with surprised Melissa Ward, who wrote the sole letter opposing the original site-plan application. She arrived just after the workshop started to find that the matter had already concluded.

"I think the decision is premature," she said. "It's abrupt. I was, what, three minutes late and it was already decided."

The abruptness may be

laid to the council's clear perception that Bryant's letter addressed the issues and that the case is open-and-shut.

"I think it was pretty clear what our options were — or lack thereof," said Mayor Chris Frye. He also noted that Bryant's letter made it clear that "code was interpreted correctly."

One of the key controversies surrounding the decision is that the planning commission never had the opportunity to review the matter. City staff's standard procedure has been to pass Type II site plan reviews on to the planning commission, which then has the option to call the plan up for further review, including a public hearing. (Referral does not mean that an application would necessarily be taken up by the commissioners.)

The standard practice of referral was not followed in this case. That created a problematic perception for the City, since the application was made by a public official.

Yet it turns out that "standard practice" was not very standard — and Boyd's application was far from the only one that was not sent on. According to records provided by City Recorder Kathy Nelson, "There were 12 Type II decisions made in 2014. Pauline (Hardie, Community Development Director) handled one and forwarded the decision onto the planning commission. Eric (Porter, senior planner) handled 11 and forwarded one decision onto the planning commission.

There was one called up by the planning commission — the Celia Hung temporary use permit application."

According to Bryant, that referral is not required by code. His letter states that "there was no violation of the city code or development code in not involving the planning commission in the decision for this application ... (code) allows planning staff to defer the Type II decision to the planning commission for decision if they so chose (sic). It does not require the planning commission's involvement or review of the staff decision. In this instance staff chose to make the decision."

Critics of the decision take issue with that interpretation. They argue that another section states that three or more members of the planning commission can call up a Type II site plan review — and that the commissioners can hardly call up an SPR that they don't know exists.

City officials from the planning commission chairman to the mayor have acknowledged that the planning commission should see every site-plan review. The council agreed that such a policy should be clearly codified. Language to that effect should be ready for council approval in March.

Ward and others expressed concern that other business wanting to site food carts might be able to apply before March and be treated the



COMMONS.WIKIMEDIA.ORG/VISITOR7

Rockin' Robyn's food cart at Rose City pod in Portland. Food carts at Eurosports will be required to conform to City of Sisters' Western theme.

same way as Boyd's application was.

However, community Development Director Pauline Hardie told *The Nugget* that she is "not aware of any other site-plan review applications in the pipeline for food carts," and that in any case, "any Type II decision made between now and March will be referred to the PC."

Bryant offered a firm legal opinion that the City cannot unwind Boyd's approval without facing significant legal risk.

"If the city council were to overturn the decision or require Mr. Boyd to resubmit his application, I would expect that Mr. Boyd would bring a lawsuit against the city to enforce the decision and seek damages from the City," Bryant wrote. "I expect

there is a high probability that Mr. Boyd would be successful in that lawsuit... The City should expect that the financial consequences to the City would be significant and would likely not be covered by the City's insurance..."

[www.RealEstateInSisters.com](http://www.RealEstateInSisters.com)

**Phil Arends**  
Principal Broker  
541-420-9997  
phil@blackbutte.com  
**HOWELLS REALTY GROUP**  
220 S. Ash St., Sisters, OR 97759  
Licensed Broker in the State of Oregon  
**SISTERS BLACK BUTTE RANCH**  
LUXURY PROPERTY LAND

A Partnership Beyond Your Expectations

Western Title & Escrow

Stop by and visit with Tiana Van Landuyt & Shelley Marsh.  
220 S. Pine St., Ste. 102 | 541-548-9180

Quality Electrical Wiring

- New Construction • Remodels
- Service Calls

David Marshall  
541-549-3233  
541-419-WIRE (9473)  
CB#1811117CCB#152389  
SERVING CENTRAL OREGON FOR OVER 10 YEARS  
[www.marshallelectricoregon.com](http://www.marshallelectricoregon.com)

*Common Sense Tip* FOR DRIVERS

**DON'T PASS STOPPED CARS.**

There could be a good reason they're stopped, like a pedestrian! A little patience could save a life — and a lifetime of regret.

Share the Road. The Way to Go. Transportation Safety — ODOT

Specializing in Central Oregon Rural Properties

**Kathy Hansbrough**  
Broker, CDPE, GRI, SRE  
Cell: 541-408-2998  
Office: 541-728-0033  
kjhansbrough@remax.net  
[www.kathyhansbrough.com](http://www.kathyhansbrough.com)

**RE/MAX Key Properties**  
431 NW Franklin Ave. Bend, OR 97701  
Licensed Broker in the State of Oregon

**RE/MAX Revolution**  
new solutions better results  
625 N. Arrowleaf Trail

**Sandy Goodsell**  
"It's not just my name, it's a promise!"

Principal Broker  
ABR, CDPE, GRI  
541-549-2510  
541-480-0183  
[www.sandygoodsell.com](http://www.sandygoodsell.com)  
Licensed Broker in the State of Oregon

LOOKING TO SHARE  
*a Home at Black Butte Ranch?*

GLAZE MEADOW 244  
Two 1/6 shares | \$169,500 each  
m/s 201407429  
m/s 201407920

**FURNISHED HOMES!**

GLAZE MEADOW 58  
1/3 interest | \$175,000  
m/s 201405979

**HOWELLS REALTY GROUP**  
EXCLUSIVE ONSITE REALTOR FOR THE RANCH

Gary Yoder, Managing Principal Broker, 541-420-6708  
Dick Howells, Principal Broker, 541-408-6818  
Phil Arends, Principal Broker, 541-420-9997  
Joe Dye, Broker, 541-595-2604 | Carol Dye, Broker, 541-480-0923  
Steve Post, Broker, 541-480-5415 | Don Bowler, Broker, 971-244-3012

541-595-3838 *at The Ranch* 541-549-5555 *in Sisters*  
Open daily at The Ranch Welcome Center • [blackbutte.com](http://blackbutte.com)