

## FOOD CARTS: Citizens offer alternative legal opinion

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commission of a Type II application, but that practice was not being followed by Porter in most cases. In 2014, there were 12 Type II decisions, 10 by Porter, with only one going to the planning commission and two by community development director Pauline Hardie, both referred to the commission and one called up.

The city council has let the decision stand. City attorney Steve Bryant provided an opinion that, "...the city council has no legal authority at this point to deny the application or reverse the decision of staff." He went on to say, "The land-use decision is final and the public cannot compel the City to take action that is outside of its authority."

A group of citizens, not specifically identified by name, have donated money and hired an attorney to obtain a second opinion. Michael Peterkin, a land-use attorney in Bend, asserts that the food cart decision is flawed under Sisters code.

The key argument is that the code actually requires that the planning commission be informed; otherwise they have no opportunity to decide whether or not to call up a decision. Peterkin provides a way to remedy the process by issuing an "amended decision" and notifying the

planning commission, thus starting the 14-day appeal process.

"Failure to serve the planning commission with a copy of the decision means that the time for the commission to initiate a review of the decision never began," Peterkin's argues. He cites case law a number of times to support his arguments. (*The full text of Peterkin's opinion may be found with the online version of this story at [www.nuggetnews.com](http://www.nuggetnews.com).*)

Citizens spoke on the matter at the Thursday, February 12, city council meeting. Those who spoke did not appear to have issues with food carts themselves, but rather with the process leading to their approval.

"I think they're (food carts) good for the city of Sisters," said Bob Norman. "I think the way the process was done seemed to be not quite right... We got the impression it was legally correct to the letter of the law but maybe it wasn't really to the spirit of the law... I'm asking that you would look at the issue and redo it as best as possible with the process that is available so that the community could look at it and say it was done right."

Roger Detweiler broadened the issue, alleging that decisions are illegally being made before public meetings are held — though he provided no evidence to support that claim.

"First, I really don't care if we have food carts or not, but what I am concerned about is how decisions are being

made these days here in Sisters... The attitude seems to be, 'the public be damned and we'll do as we please.'"

Detweiler's comments took on a more personal tone when he suggested that the former mayor and current city manager were in cahoots.

"The other issue that this raises for me is a sort of 'you scratch my back, I'll scratch yours.' The former mayor was instrumental in getting the current city manager appointed to his job by moving outside the usual hiring process. So it should come as no surprise that the former mayor gets his food carts outside the normal approval process," he said.

Asked later for a response to Detweiler's remarks, City Manager Andrew Gorayeb declined to comment on the record other than to say, "I am very disappointed by the man's comments, and I decline to comment further."

In an interview with *The Nugget*, Brad Boyd said he had done everything required by State law and City code in his application process. He followed the same process as the former Outlaw Coffee (now Dutch Bros.), Richard's Produce, and Bright Spot.

"There is nothing new here from a land-use perspective or as far as codes are concerned," Boyd said.

He went on to say that Detweiler's comments regarding Gorayeb's hiring were untrue and slanderous.

Boyd has felt personally attacked over this issue.

"I as the former mayor have been scrutinized beyond

reason. If they're not against food carts, what are they against? I think it's personal against me and Andrew," he said.

Ed Protas told the council that he has a petition signed by about 100 residents asking for a public hearing on the food cart decision.

"We're asking the council to have a community dialog to discuss how this decision was handled and what it means for the future of the community. We have food carts sort of dropped out of the sky now by a matter of policy that was decided by one individual without any supervision. That's not how public policy should be made," he said.

Owner of Sisters Bakery, Melissa Ward, who had originally registered concern about the food carts during the public notice period, believes that a large percentage of the business population is concerned about the way the decision took place and believe it was a big mistake.

"It seems like there has been some recklessness with the way the decision has been made. It is beginning to cause some question about the integrity of the council.... Where a mistake has been made, you don't just soldier on and leave everyone in the background. You address the mistake and correct the mistake. All that is being asked for with this petition is that you allow the community involvement and that you readdress the situation at hand," Ward said.

The council gave no clear indication as to what might happen next. They have been presented with a legal opinion that counters that of the city attorney, and citizen demands to undo the actions of staff. And they have a former mayor and business-owner who asserts that he went through the proper process and has a binding land-use decision in hand.

"The city can't go back and redo the decision without me suing them — and I will," Boyd confirmed.

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