

FOOD CARTS:
Planners have offered to review food carts

Continued from page 1

commission, and want to see the decision revisited and/or unwound.

Laura Cooper, the attorney retained by Boyd, sent a letter to the Council in which she made Boyd's position clear. Because no appeal of Porter's decision was made within the 14-day appeal period, the approved final land-use decision may not be revoked.

"...if the City takes any action that would revoke the approval or that would otherwise prohibit or impede my client from developing and using its property pursuant to the approval, my client will take legal action against the City. Such legal action would include a lawsuit for damages resulting from such revocation, prohibition or interference," Cooper's letter stated.

It went on to say, "Since the improvements my client is contemplating would have a useful life of at least 20 years, we would seek damages of as much as \$3.5 million."

Attorney Michael Peterkin, who was retained by local citizens, had earlier rendered an opinion that the final approval "has legal and ethical concerns and is procedurally deficient. The decision was never finalized by serving a copy on the planning commission." He backs up those conclusions citing case law.

The City Council was faced with public outcry regarding the approval process and interpretation of the code as well as a perceived conflict of interest on the part of Boyd as the then-seated mayor, who was part of ongoing discussions regarding transient merchant licenses.

At the same time, city attorney Steve Bryant advised Council that there is nothing in state law allowing them to unwind the approval process, as it is final. He cautioned that if they were to attempt to do that, they have already been told Boyd will sue the City. Bryant believes there is a "high probability" that the City would lose the lawsuit and warned that insurance carried by the City would not cover the costs of a loss because Council was acting

outside its authority.

At this point, the possibility of losing a lawsuit is hypothetical, and it couldn't be determined by press time whether insurance actually would or would not cover such a loss.

**"...improvements my client is contemplating would have a useful life of at least 20 years, we would seek damages of as much as \$3.5 million."
— Laura Cooper**

Councilor Nancy Connolly referred to a letter from absent Councilor David Asson in which he indicated support for seeking a third legal opinion, given the differing views of Bryant and Peterkin. Connolly supported that view, indicating it might be money well spent in an attempt to regain citizen trust. Her motion to that effect died for lack of a second.

Mayor Chris Frye, while

attempting to summarize the discussion, stated that Council already had three legal opinions (including Boyd's attorney) — to which members of the public responded with boos and catcalls.

General consensus of the Council appeared to be that they don't have the legal authority to reverse or rescind the final approval given to Boyd's application for food carts on his property. There was a desire by Council to not possibly jeopardize the financial viability of the City with a threatened lawsuit. Frye indicated his regret over the situation.

"I wish from the get-go this application had gone to the planning commission," he said.

The Council is hopeful they can put this issue to rest and move forward to consider changes to the development code to allow for specific food cart regulation. Frye indicated that the planning commission has already offered to take on the entire public process regarding food cart regulation, much as they have with the formula food issue.

In addition, Council has

recently agreed on policy that will require not only notification of owners of buildings within 250 feet of a proposed land-use project, but also the actual business owners, who will be notified by the Sisters Area Chamber of Commerce. A second amendment will explicitly require that staff notify the planning commission of all Type II decisions, allowing the commission to decide on a case-by-case basis if they want to conduct reviews.

Connolly, who agreed to go along with the majority opinion of the Council to not seek a third legal opinion, reminded the citizens assembled in the chamber that they had just had the opportunity to witness the process the Council went through in reaching their decision. She went on to encourage people to run for office and volunteer for citizen committees when openings occur. The mayor joined Connolly in encouraging everyone to stay involved.

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