

**CITY OF COQUILLE  
CITY COUNCIL MEETING MINUTES  
June 16, 2005**

**COUNCIL PRESENT:** Mayor Steve Britton, Councilors: Jan Torbeck, Mollie Anderson and Kathy Hagen and Loren Wiese

**STAFF PRESENT:** City Manager Terence O'Connor, Finance Director Chuck Dufner, Public Works Director John Higgins, City Attorney John Trew

**PRESS:** None

**AUDIENCE:** A roster of those present is on file in the City Recorder's Office.

**1. CALL TO ORDER**

Mayor Britton called the meeting to order at 7:03 p.m.

**2. PLEDGE OF ALLEGIANCE**

The Mayor opened the meeting with the Pledge of Allegiance.

**3. APPLICATION FOR APPROVAL OF ANNEXATION – James Smejkal, Applicant**

City Attorney John Trew has reviewed the Final ORDER of Findings of Fact the Council made at the meeting held May 2, 2005 and found it to be in order. If there are no questions the Council should take action to approve the Final ORDER of Findings. Councilor Anderson made a motion to approve the Final Order of Findings, Councilor Wiese seconded and all voted in favor.

**4. ORDINANCE NO. 1455 AN ORDINANCE DELARING THE ANNEXATION OF CERTAIN REAL PROPERTY TO THE CITY OF COQUILLE, OREGON**

Attorney Trew said next the Council needed to adopt the Ordinance 1455 An Ordinance declaring the annexation of certain real property to the City of Coquille. Councilor Anderson made the motion to adopt Ordinance 1455 and Councilor Wiese seconded. A roll call vote was taken, in favor, Councilor Wiese, Councilor Hagen, Mayor Britton, Councilor Torbeck and Councilor Anderson. Opposed: None

**5. QUASI-JUDICIAL PUBLIC HEARING – APPEAL OF CITY OF COQUILLE PLANNING COMMISSION DECISION FOR A SETBACK VARIANCE TO THE RIPARIAN CORRIDOR SETBACK REQUIREMENT – John Brugh, Appellant**

The Mayor opened the Quasi-Judicial Public Hearing at 7:10 p.m. Attorney Trew noted that this appeal and the Quasi-Judicial hearing is a little different than usual in that the Council will not be acting as a legislative body but as an impartial quasi-judicial body to hear Mr. Brugh's appeal of the Planning Commission's decision to grant a variance to allow a 37 foot 6 inch setback rather than the 75 foot required by ordinance. Mr. Brugh is requesting a 10 foot setback. The appeal is based on the record of the Planning Commission action that is in the packet, Mr. Walt Hogan is here representing Mr. Brugh. There are certain questions required, first have any of the Council had any ex-parte contact with Mr. Brugh or visited the site that should be declared. Mayor Britton, Councilor Wiese and Councilor Hagen have visited the site, Councilor Wiese had coffee with Mr. Brugh but the site was not discussed. Attorney Trew asked if anyone wished to question the members of the Council about the substance of the contact they had with Mr. Brugh. Hearing no questions Trew asked if any members of the Council had any personal interest or bias in this matter. Trew asked if anyone objected to the jurisdiction of the Council to hear this matter, hearing none Trew continued and read into the record some items, first the planning staff will identify some applicable criteria and those criteria that apply are in the report. All testimony, arguments and evidence shall be toward that criteria in the report or other criteria, comprehensive plan or land use regulations which that person believes applies to the decision. Failure to raise an issue accompanied by statements or evidence sufficient to afford the Council or parties an opportunity to respond to the issues

precludes appeal to the Oregon Land Use Board of Appeals (LUBA) based on that issue. Failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to allow this Council to respond to the issue precludes the action for damages to the circuit court. Planning Director told the Council that proper notices had been posted. Higgins continued by describing the property and access, he gave the city ordinance applicable and noted the letter from the Oregon Fish and Wildlife and ODOT. Higgins discussed the sections of the OAR's dealing with the riparian setback requirements and large stream definition, all information included in the packet. The planning commission found that Mr. Brugh's property was located between two grandfathered properties with less than the required setback and granted a variance to a 37.5 foot set-back. Councilor's Torbeck questioned Mr. Higgins about the setback requirement, she remembered the requirement being 100 feet, but Higgins said it was 75 foot, Mayor Britton noted the bridge was only 20 feet or so from the river and asked if flooding would be a problem, Higgins responded that 21 feet elevation was the flood zone and the foundation would be 22 feet. The Mayor noted that it looked like the Council was bound by both City Ordinance and State law regarding the setback. The Mayor expressed his desire to treat the property as though it was his own but was restricted by law.

At this point Mr. Hogan representing Mr. Brugh presented his case, he asked that the Council review the taped transcript of the Planning Commission where his impression was that the Commission would have granted a closer variance but they felt they could not, and that this project would help the economy. He also noted that the existing building and bridge had caused no problem to date, just at the mayor had noted. He asked the council to amend or vary the city ordinance. Mr. Trew then called for any member of the Planning Commission, seeing none he called for anyone else to speak in support of Mr. Brugh request. Mr. Don Kinnard stepped up to say this may be a Measure 37 issue and the council may wish to allow the request or be prepared to reimburse Mr. Brugh for the loss of property value. Mr. Trew then asked if anyone wished to speak in opposition to Mr. Brugh's request. Hearing none he asked for any other questions from Council to staff. Councilor Torbeck asked if there were liability issues if the request was granted, Mr. Trew said there could be some action from certain state agencies against the city. Mr. Trew also stated that any possible measure 37 claims would need to be considered as a separate measure not at this time. Mayor Britton asked if the council allowed the building that close to the river would the city be liable if the river were to flood for granting the variance, Trew responded that has happened in other areas. Councilor Wiese said the council should not consider changing or varying the ordinance at this time, Councilor Anderson also was concerned about liabilities should the council grant the 10 foot setback. Attorney Trew asked if any parties representing public agencies wished to testify, hearing none, does staff wish to offer rebuttal, hearing none, does any participant wish to present additional written arguments regarding the petition, being none the Mayor closed the quasi-judicial meeting at 7:37 p.m. June 16, 2005. Trew said now was the time for discussion, after which the Council should make a motion with regard the appeal. Mayor is concerned about the city ordinance restricting the property rights of a land owner and there may be a Measure 37 issue, Councilor Anderson believes we should not grant the setback over the city ordinance, that Mr. Brugh will eventually have to deal with the state, Councilor Wiese believes we uphold the Planning Commission and ordinance and let the property owner pursue other remedies. Councilor Wiese made a motion to uphold the Planning Commission decision and allow a 37.5 foot setback, Councilor Hagen seconded. Councilor Hagen, Councilor Wiese and Councilor Anderson voted in favor, Mayor Britton opposed, the motion passed. Councilor Wiese made a motion to direct staff to bring back a Final Order of Findings, Councilor Anderson seconded, all voted in favor.

## 6. ADJOURN

Mayor Britton adjourned the regular meeting at 8:37 p.m.

---

Councilor Anderson

ATTEST: \_\_\_\_\_  
Deputy Recorder