

Town of Leeds

Town Council Meeting for July 13, 2016

1. Call to Order:

Mayor Peterson called to order the regular meeting of the Leeds Town Council at 7:02pm on July 13, 2016 at Leeds Town Hall, 218 N Main.

ROLL CALL:

	<u>Present</u>	<u>Absent</u>
MAYOR: WAYNE PETERSON	x	_____
COUNCILMEMBER: RON CUNDICK	x	_____
COUNCILMEMBER: ANGELA ROHR	_____	x
COUNCILMEMBER: ELLIOTT SHELTMAN	x	_____
COUNCILMEMBER: NATE BLAKE	_____	x

2. Pledge of Allegiance by Councilmember Sheltman.

3. Declaration of Abstentions or Conflicts: None.

4. Approval of Agenda:

Councilmember Cundick moved to approve tonight's agenda and meeting minutes of June 8 and June 23, 2016. 2nd by Councilmember Sheltman. Motion passed in a Roll Call Vote.

ROLL CALL VOTE:

	<u>Yea</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
MAYOR: WAYNE PETERSON	x	_____	_____	_____
COUNCILMEMBER: RON CUNDICK	x	_____	_____	_____
COUNCILMEMBER: ANGELA ROHR	_____	_____	_____	x
COUNCILMEMBER: ELLIOTT SHELTMAN	x	_____	_____	_____
COUNCILMEMBER: NATE BLAKE	_____	_____	_____	x

5. Citizen Comments: None.

6. Announcements:

Mayor Peterson announced the following event:

- a. Monthly community pot luck barbecues. Last Friday monthly at 6:00pm, May to September in Town Park

Councilmember Rohr arrived to the meeting at 7:04pm.

7. Public Hearings: None.

8. Action Items:

- a. Planning Commission Appointment – Danny Swenson

Mayor Peterson, Danny Swenson filled in for the past final year on a term. I have spoken with

him and he has asked if I would make available the term that has 2 years remaining, which I am willing to do and I put forward the reappointment of Danny Swenson.

Mayor Peterson asked for a motion to approve Danny Swenson’s reappointment to the Planning Commission.

Councilmember Rohr, I so move. 2nd by Councilmember Cundick. Motion passed in a Roll Call Vote.

ROLL CALL VOTE:

	Yea	Nay	Abstain	Absent
MAYOR: WAYNE PETERSON	x	_____	_____	_____
COUNCILMEMBER: RON CUNDICK	x	_____	_____	_____
COUNCILMEMBER: ANGELA ROHR	x	_____	_____	_____
COUNCILMEMBER: ELLIOTT SHELTMAN	x	_____	_____	_____
COUNCILMEMBER: NATE BLAKE	_____	_____	_____	x

- b. Discussion and possible action regarding adoption of Land Use Ordinance 2016-05, Chapter 17, Commercial District.

Mayor Peterson, this was at a public hearing where it was viewed by Planning Commission a week ago and after the public hearing, the Planning Commission unanimously recommended approval of the changes. The changes are underlined in the document; it is in regards to the Commercial District. The reason why they were looking to take it up is because when we eliminated the Mixed Use, we eliminated several of the commercial uses that were in that and also because we do have some issues with language in our different zones. We have permitted uses, conditional uses and then we say “anything that is not a permitted use, or conditional use, is a prohibited use”. Courts have ruled that you may not be that exclusionary by saying “everything else is prohibited”. Bob Nicholson is the one who brought forward the language that was reviewed by Gary Kuhlmann.

The Mayor read the amendments.

Councilmember Sheltman, it pretty much looks like it is open ended at this point with the part that we are adding. Other uses recommended are pretty much anything isn’t it?

Mayor Peterson, well they can be recommended and then it would be something where they deemed it appropriate to recommend and they do reflect that it is in harmony with the intent and purpose of the zone, which presumably would be consistent with, or similar to the types of uses that are listed above. The difficulty I see is that if you try to list the prohibited uses, you will never succeed in thinking of every bizarre or undesirable thing that you may not want to have taking place in the Town. So if you try to satisfy it by saying we will have a prohibited use section, I think although this is open ended, I think it almost becomes more open ended if you don’t happen to think of the most bizarre thing somebody would propose as a commercial activity here in Leeds.

Councilmember Sheltman, I can see that but it pretty much puts it on our shoulders because it gives the Planning Commission an out now to say “let’s pass it on” because it looks to me like it fits the intent and purpose of the Ordinance. So I guess my other concern is, what power does it take away from Planning and how much more power does it give to us? Not the way it is written, but the way that it could work in practice.

Gary Kuhlmann, it works fairly similar to a conditional use application, not strictly, but the same process. I don’t know that it is adding or taking away any authority anywhere. It’s trying to

cure a problem that was created by case law.

Councilmember Sheltman, is there other jurisdictions that have this kind of wording?

Gary Kuhlmann, yes and there is other jurisdictions that have a list for all commercial zones; a list of everything they could think of and they put prohibited if they don't want it in that zone, but what the courts have said is, you can't use the blanket of everything else is prohibited. You have to designate it and if you do not designate it, you have to consider it under this type of language to see if it is going to meet the purpose of your zoning.

Councilmember Sheltman, so does this give us an out if we say "we considered it" for the way this is written?

Gary Kuhlmann, if you make findings that are not in harmony with the zone and meet the purpose of the zone, absolutely. The courts are moving that way; it's the same thing with the Conditional Use Permit. Conditional Use Permits now are such that you; basically the code was changed some years ago based on a court case that said "if you can put conditions on it, you have to allow it". The only time you do not allow a Conditional Use Permit is if there is no way to substantially, but not completely, but substantially, mitigate the impact of the business it is going to create. So they are all moving that way and limiting our ability to prohibit. The intent of this is not to get into the language of prohibit it, but to leave it up to the Planning Commission and Town Council to determine whether it actually is. Now if you find it is not in harmony and purpose of the zone, then you can contest that. You have a little bit of help there because zoning is really a legislative function, so you have some protection in regards to that. Councilmember Cundick, if there were several uses that we were wanted to prohibit, could we have a list of those prohibited uses? Then you wouldn't get into the argument of if it was in harmony or not.

Gary Kuhlmann, you just say "despite that language of whether it is in harmony, the use is prohibited".

Councilmember Cundick, as I see it Elliott, if we were aware of some things that we strictly want to prohibit, we could do that and then the issue wouldn't arise unless they challenged it, but at least we wouldn't get to the harmony test if it was prohibited.

Councilmembers and Gary discussed it further and the following section was added:

17.3.15 Adult Oriented Business in accordance with Land Use Ordinance 7.9.2.1

Mayor Peterson asked for a motion to approve the amended Chapter 17 of the Land Use Ordinance, which will be known as Ordinance number 2016-05.

Councilmember Cundick, I so move. 2nd by Councilmember Sheltman. Motion passed in a Roll Call Vote.

ROLL CALL VOTE:

	Yea	Nay	Abstain	Absent
MAYOR: WAYNE PETERSON	x	_____	_____	_____
COUNCILMEMBER: RON CUNDICK	x	_____	_____	_____
COUNCILMEMBER: ANGELA ROHR	x	_____	_____	_____
COUNCILMEMBER: ELLIOTT SHELTMAN	x	_____	_____	_____
COUNCILMEMBER: NATE BLAKE	_____	_____	_____	x

9. Discussion Items:

a. Wild West Day

Councilmembers discussed Wild West Day and were in favor of holding a one day event. The tentative date was set for October 8th.

b. Road Works Update

Councilmembers discussed the 2016-2017 road work reconciliation. The total for the work completed on the maintenance schedule was \$41,559.43. Cherry lane and Old Hwy 91 will still need to be completed. The low estimate on Cherry Lane came in at \$1,987.50 and the estimated cost for Old Hwy 91 is \$4,000 dollars. No additional action will need to be taken because the total cost came in under the already approved 2016-2017 amount of \$50,000 dollars for road maintenance.

Councilmembers discussed Provalue Engineering's estimate that came in on the Canyon Creek improvements. The estimate came in at \$21,581.00 dollars for the repairs and does not include bidding for the work or Engineering oversight. The item will be placed on next month's agenda.

Councilmember Sheltman asked about the Main Street curb and gutter project. Mayor Peterson indicated UDOT and Ensign Engineering are still working on redesigning it to get more work for the money that is involved. The work should be completed by the end of the year.

10. Citizen Comments:

11. Staff Reports:

Mayor Peterson, Gary is here, we have had in the last few weeks some incidents in Town and will you (Gary) please address the prosecutor issue.

Gary Kuhlmann, I was contacted by the County Attorney's Office as well as the County Justice Court a few weeks ago. An individual had been arrested out here for assault and we advised them we do not have a prosecutor at this point. I can't do it, I am prohibited from doing it and so the County decided they were going to decline prosecution and so I just told the Court that we can't do much until we get a prosecutor. It was agreed that the Court would set it out for a review hearing for the middle of August to allow us to get a prosecutor in place and then we could decide whether to file on that case or not. About a week later there was another charge on the same individual for trespassing with the same situation. They set both of those out towards the middle of August for review by the Court. Yesterday or the day before, the individual was arrested again and this time for domestic violence. I spoke with the County Attorney and he decided that he would go ahead and file on that charge just out of concern that it seems to be escalating and I agreed he shouldn't just be cut free. So, they are filing on that but they are expecting us to get a prosecutor in place and they are going to hand that case off to be prosecuted.

Gary Kuhlmann and Councilmembers discussed the options for hiring a Town Prosecutor. It will be an action item on next month's agenda.

Councilmember Blake arrived to the meeting at 7:55pm.

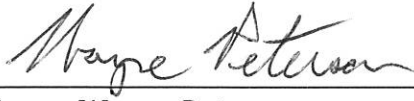
Mayor Peterson discussed the budget update. Money was moved off the codification line to the insurance line to cover the cost of the increased insurance premium for the Town's liability insurance. No action is needed because it did not change the State reports.

12. Adjournment:

Councilmember adjourned the meeting.

Time: 7:57pm.

APPROVED ON THIS 10th DAY OF August, 2016



Mayor, Wayne Peterson

ATTEST:



Kristi Barker, Clerk/Recorder