



City of Seneca

Phone/Fax: (541) 542-2161

PO Box 208 / 106 A Ave.

Seneca, OR 97873

**CITY COUNCIL
Special MEETING
June 26th, 2017**

Present Council

Bill Williams

Melissa Pettyjohn

Sue Holliday

Andrea Combs (Came in at the end of the meeting)

Public

None

**City Manager/Recorder Josh Walker,
Minutes taken by Raamin Burrell**

Councilor Holliday called the meeting to order at 3:05pm.

Open Floor:

Councilor Holliday called for open floor items from the public. There were none.

Approval of RFQ for Engineering Services for Wastewater Project:

Councilor Holliday read the agenda item aloud. City Manager Walker explained what the RFQ is (Request for Qualifications). The Council will have to review and grade the proposals when they are submitted. City Manager Walker explained the proposed timeline for applicants and the process to the Council, and that the RFQ has already been reviewed by both the Grant Administrator and Tawni Bean at IFA.

-Councilor Holliday made the motion to accept and sign the RFQ, Councilor Pettyjohn seconded it. All were in favor, motion passed and RFQ will be signed by Mayor Combs.

Public Restrooms at City Park:

Councilor Holliday read the Agenda item aloud. City Manager Walker explained that there were no issues with the restrooms so far, but that he'd been approached about closing them due to the possibility of mess left by the Rainbow Family members. Councilor Holliday is in favor of leaving them open until there is an issue, citing the reason that if they are closed then people are more likely to leave



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their waste elsewhere around the park. Councilor Pettyjohn asked about the issue with the Men's room door locking. City Manager Walker explained that the door lock is one of those with a push button to lock the door from the inside, So, when the door is slammed open, it locks. The City has been waiting to replace the lock due to the cost. The Fiscal year 2017-18 budget should allow for those purchases out of the City Park fund. City Manager Walker was concerned about theft of supplies and vandalism, but stated that they would stay open and the issue can be revisited if there are future issues.

City Attorney Legal Opinion Letter Review:

Councilor Holliday read the Agenda item aloud. Per the Council, City Manager Walker referred all documents to the City Attorney for review. The item being discussed is the Attorney's legal opinion letter (Attachment A) in response to the letter submitted by Joy Graves. In short, it states that the City has followed all procedures as set forth in the City Code and ORS properly and legally and addresses all of the information presented by Ms. Graves in her letter to the Council. After review, Councilor Pettyjohn voted to proceed with the abatement as planned, and according to City Code. A resolution for the abatement, with the cost assessment from the City Manager office will be presented at the July 11th City Council meeting with a tentative date set for the abatement of July 17th, 2017. The City Attorney will draft a letter to send to Ms. Graves with the official Notice of Abatement with the dates set. Councilor Holliday asked for a motion to approve the City Attorney handling the documentation and notification to Ms. Graves.

-Councilor Pettyjohn made the motion to approve, Councilor Williams seconded it. All were in favor, motion passed.

Work Session for RFP for Shirrtail Creek Subdivision:

Councilor Holliday read the title of the Agenda item aloud. City Manager Walker explained that the RFP has been started but the fine details need to be hammered out and decided upon. He explained that since there were issues with previous lots that went up for bid, we want to make extra sure that we do this right the first time and address all the issues ahead of time. City Manager Walker explained that the easiest way to go about setting this up is to grade the proposals by specific criteria, that are included in the RFP. Set up a point system for the criteria and grade accordingly. Also, once there is a point system in place, then the City Council will have a legal backing for any decision made in regards to the proposals. The point system for grading the bids can be set up similar to the Grant



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Administrator RFP bids, or something slightly different can be set up. Councilor Pettyjohn stated that she didn't like having the bids weighted by cost. She wants there to be availability for lower cost bids that have other more favorable attributes. City Manager Walker explained that the cost was a part of the bid, not the entire basis of grading the criteria. He also explained how the base amount for each lot was going to be calculated when the final RFP goes out for bid. The City Council will weigh in on what they want as criteria and how heavy to weigh each item via a points system. Councilor Pettyjohn stated that the dollar amount should be one of the least important criteria. She would also like to see if "having kids for the Seneca School" or having younger families with the intent of keeping the School and community going can be given more points. Also, that community service or volunteer involvement with the community can be included as a criterion. City Manager Walker suggested calling the section "Community Benefits" and giving it more points to pull from. For example, giving that section a 50-point base out of 100 points. Councilor Pettyjohn stated that the proposed time limit for constructions on the lots was 3 years, but she'd like to see a more points given for a shorter time frame. One section made for criteria will be "Site Plan" and the Council would like to see a minimum of 1500 square feet with 3 bedrooms and 2 bathrooms as a criterion. City Manager Walker brought up the Wastewater Facility Plan and that most of the lots will be hooked up to the new system, however, lots 1 & 2 may have to be hooked up to a pump to push the waste up to the nearest gravity feed. Councilor Pettyjohn asked when we will know about the Sewer system? City Manager Walker stated that Joe Hitz has the preliminary sewer plan done and has been asked to provide the costs. In total, estimates total development costs to be approximately \$80,000 to \$100,000. There has been considerable interest in the proposed lots and the City is hopeful that the bids will be favorable. Councilor Pettyjohn asked what the time frame was for the lots to be ready? City Manager Walker stated that we were hopeful to be able to publish the RFP in August with the bids submitted and have the Council review at the September meeting. Council would like to see a new version of the RFP drafted, submitted to the City Attorney for review, and resubmitted to Council at the July meeting. Also, the Council would like to see something about encouraging people to bid on multiple lots.

Resolution 10-17: Resolution for Naming of a City Street Located Within the City Limits of the City of Seneca, OR:

Councilor Holiday read the title of the Agenda item aloud. Raamin explained that in order for the subdivision to be officially platted, then Shirttail Creek Road had to be officially made a City street by Resolution that will add it to the City



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proper. Councilor Holliday read the Resolution and called for a motion to accept this Resolution with no changes.

-Councilor Pettyjohn made the motion to pass and sign Resolution 10-17, Councilor Williams seconded, all in favor and Mayor Combs will sign.

Councilor Holliday adjourned the meeting at 4:20 p.m.

Mayor:

Andrew Combs

Attest:

J T Webb

BRENT H. SMITH
WYATT S. BAUM
SADIE A. KENNEDY
DELOAN C. LEE

BAUM SMITH^{LLC}
ATTORNEYS AT LAW

PARALEGALS
EMILY H. HODGSON
KORI A. VANDERZANDEN

June 21, 2017

VIA EMAIL & U.S. POST

CITY OF SENECA
P.O. BOX 208
SENECA OR 97873
e-mail: senecaoregon@gmail.com

RE: LETTER FROM JOY M. GRAVES
FILE NO. 5463-001

Dear Council:

THIS OPINION CONSTITUTES AN ATTORNEY/CLIENT COMMUNICATION, AND AS SUCH IS A RECORD EXEMPT FROM PUBLIC INSPECTION PURSUANT TO ORS 192.502(9). TO THE EXTENT IT IS DISCUSSED DURING A PUBLIC MEETING, THAT DISCUSSION SHOULD OCCUR IN AN EXECUTIVE SESSION HELD PURSUANT TO ORS **Attachment A** HOWEVER, THIS ATTORNEY/CLIENT PRIVILEGE EXEMPTION MAY BE WAIVED BY THE CITY OF SENECA COUNCILORS.

I was asked by Mr. Josh Walker to provide the Council with an opinion letter regarding the letter received from Ms. Joy Graves which was read to the Council at last week's City Council meeting.

The issue at hand, as I understand it, is nuisance abatement on properties owned by Ms. Graves. There are two related but separate abatement issues at hand. The first is the abatement of 102, 104 and 106 B Avenue with regard to junk, debris and trash. These nuisances are also causing an attractive nuisance.

The other abatement issue involves a building the City has deemed qualifies as a "dangerous building." This structure is located at 106 B Avenue. Letters notifying Ms. Graves of the nuisances were sent out. Adequate notice was published and the requisite hearings were held to allow the City to move forward with the abatement process. If owners of property receive notice of a nuisance and an order to abate the nuisance and refuse to act on the order. The City is authorized through the City code to abate the nuisance and assess a fee covering the costs of the abatement to the property.

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The process the City has implemented to abate a determined nuisance is legal under the laws of the state of Oregon.

In her letter, Ms. Graves addresses various state and federal laws, and claims the City is violating her rights. I will briefly address each claim and law cited below and how the claim may affect the City's abatement process.

STATE OF OREGON

ORS 150.107. This citation does not exist and has never existed in the Oregon Revised Statutes. Moreover, even if it did exist, it would be within the criminal penal code of the state and would not be relevant to the issues at hand.

ORS 570.175. This statute covers state enforcement of abatement as it related to horticultural businesses. Chapter 570 is titled "Plant Pests: Invasive Species." The enforcement agency under this statute is the State Department of Agriculture and counties. The Ag department enforces the abatement through each counties District Attorney's office. This section does not apply to the City.

ORS 196.855/870. These statutes deal with removal of material on state lands and does not apply.

As you know, Oregon is also a home rule state. The City's charter confers upon the City all the powers permissible under state and federal law. However, Courts have developed a two-step test to determine whether a city action is a valid exercise of home rule authority. The first step requires an examination of the city's charter. The second step involves a search for conflicting state or federal law. An oversimplification of this is home rule cities can legislate on a local level as long as they have not preempted state or federal law in the area they are legislating. One of the many areas permissible for cities to regulate is nuisances on property inside City limits. The City, based on its charter and code has the ability to abate nuisances on property as long as the process set out by the code is followed.

A Court will look at the following issues in determining if the City has acted unlawfully:

- (1) Did the City exceed its jurisdiction?
- (2) Did the City fail to follow its own procedure?

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- (3) Did the City make a finding not supported by substantial evidence in the whole record?
- (4) Did the City improperly construe the applicable law?
- (5) Did the City render a decision that is unconstitutional? See ORS 34.040.

Based on the actions of the City to this point, I do not see any issue with the process. I also do not see any issue wherein State law would prevent you from moving forward with the abatement.

This brings us to the other issues raised by Ms. Graves, protection on religious freedom as set out by the federal government.

FEDERAL AND CONSTITUTIONAL LAW

Religious Land Use and Incarcerated Persons Act (RLUIPA). Ms. Graves argues she dedicated the land as a church sanctuary on September 1, 2013. As a preliminary matter, the City code lawfully requires residents to get a conditional use permit to have a church in the residential zone. Ms. Graves did not go through the conditional use process and did not provide the City with any notice of its dedication. Further, even if it is a church, in most situations, the law permits cities to enforce nuisance ordinances against properties owned by churches.

RLUIPA protects individuals, houses of worship, and other religious institutions from discrimination in zoning and landmarking laws. Abatement processes are not zoning laws as they apply evenly to all zones regardless of use. Further, the law protects against discrimination based on specific religions and prohibits disparate or different treatment of like situated individuals in similar circumstances. In this situation you are not discriminating against Ms. Graves based on her religion, or her use of the property. I do not believe this law would apply to your current situation.

Religious Freedom Restoration Act of 1993 (RFRA). RFRA prohibits any governmental entity from substantially burdening a person's exercise of religion even if the burden results from a rule of general applicability. However, the government may burden a person's exercise of religion if it demonstrates that application of the burden to the person: (1) furthers a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest. The issue here is nothing the City is doing is burdening Ms. Grave's exercise of religion. As far as I can tell, nothing in the abatement ordinance affects Ms. Graves'

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ability to practice or exercise her religion. Further it is a compelling governmental interest to remove dangerous buildings from publicly accessible lots.

American Indian Religious Freedom Act (AIRFA). AIRFA is a US federal law and a joint resolution of Congress passed in 1978. It was created to protect and preserve the traditional religious rights and cultural practices of American Indians, Eskimos, Aleuts and Native Hawaiians. These rights include, but are not limited to, access of sacred sites, repatriation of sacred objects held in museums, freedom to worship through ceremonial and traditional rites, including within prisons, and use and possession of objects considered sacred. This joint resolution has been particularly difficult to enforce since its inception.

First Amendment of U.S. Constitution. This deals with establishment and free exercise of religion. The City is not infringing on Ms. Graves right to exercise her religion and is not asking her to abate the nuisances on her property, including the dangerous building, as a result of her involvement with her particular religion.

Second Amendment to Oregon Constitution. I believe she mis-cited this section. I believe she meant to cite Section 2 of the Oregon Bill of Rights which states, "All men shall be secure in the Natural right, to worship Almighty God according to the dictates of their own consciences." Again, abatement ordinances are not in violation of the free exercise clause of the Oregon Constitution.

16 USC 241. This section of the United States Code deals with the establishment of boundaries and the maintenance of roads in Theodore Roosevelt National Park in North Dakota, and does not apply here.

16 USC 242. This section of the United States Code sets out the condemnation of land making up Theodore Roosevelt National Park, and, again, does not apply here.

Conclusion

At this point I think the City is within its rights to move forward with the abatement. If you would like me to respond on the City's behalf to Ms. Graves, please let me know and I will proceed accordingly.

If you have any other questions do not hesitate to contact me.

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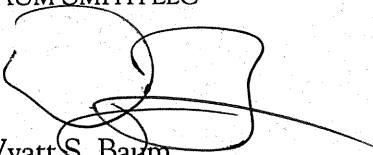
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Very truly yours,

BAUM SMITH LLC



Wyatt S. Baum

WSB/ehh

RESOLUTION 10-17

A RESOLUTION FOR NAMING OF A CITY STREETS LOCATED WITHIN THE CITY LIMITS OF THE CITY OF SENECA, OR

WHEREAS the City Council for the City of Seneca has determined that an existing street must be officially added to the public streets of the City of Seneca for the purpose of creating proper public access to lots located within the Shirrtail Creek Subdivision;


WHEREAS the City Council for the City of Seneca, by the power vested in it by the City Charter, do hereby officially declare the public road to be named and described as follows:

- Shirrtail Creek Road: Legal description is attached as "Exhibit A"

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Seneca that the existing street named "Shirrtail Creek Road" by officially adopted as a legal public street of the City of Seneca.


This Resolution shall become effective upon signing.

ADOPTED by the common council this 26 day in the month of June in the year 2017.



Andrea Combs, Mayor

Attest:



Joshua Walker, City Recorder/Manager

EXHIBIT A
LEGAL DESCRIPTION

A public road, for ingress and egress, 50 feet wide, 25 feet on each side of the following described center line situated in the SE 1/4 of Section 34, T16S, R31E, W.M. and in the NW 1/4 of Section 2 and in the NE 1/4 of Section 3, T1 7S, R31E, W.M., City of Seneca, Grant County, Oregon, more particularly described as follows:

Beginning at a point on the center line stripe of Highway 395, which is 297.36 feet South and 1047.10 feet East of the NE corner of said Section 3;

Thence S85°00'00"W, 45.00 feet;

Thence S76°00'00"W, 38.68 feet;

Thence 231.26 feet along the arc of a 500.00 foot radius curve right, the long chord of which bears (S89°15'00"W, 229.20 feet);

Thence N77°30'00"W, 306.92 feet;

Thence 66.76 feet along the arc of a 150.00 foot radius curve left, the long chord of which bears (S89°45'00"W, 66.21 feet);

Thence S77°00'00"W, 110.00 feet;

Thence S74°00'00"W, 67.42 feet;

Thence 202.46 feet along the arc of a 450.00 foot radius curve right, the long chord of which bears (S87°00'00"W, 202.46 feet);

Thence N80°00'00"W, 60.00 feet;

Thence N66°00'00"W, 70.00 feet;

Thence N51°20'00"W, 128.26 feet;

Thence 87.44 feet along the arc of a 90.00 foot radius curve left, the long chord of which bears (N79°10'00"W, 84.04 feet);

Thence S73°00'00"W, 63.23 feet;

Thence 166.90 feet along the arc of a 225.00 foot radius curve right, the long chord of which bears (N85°45'00"W, 163.10 feet);

Thence N64°30'00"W, 412.52 feet;

Thence 229.92 feet along the arc of a 380.00 foot radius curve left, the long chord of which bears (N81°50'00"W, 226.43 feet);

Thence S80°50'00"W, 250.00 feet; Thence S82°30'00"W, 175.16 feet;

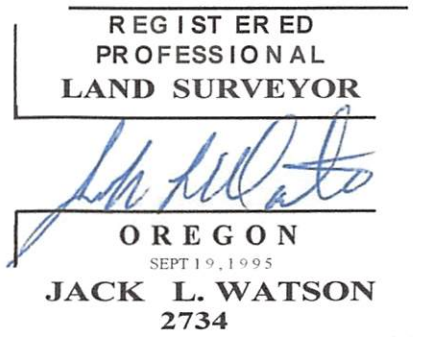
Thence 74.18 feet along the arc of a 250.00 foot radius curve left, the long chord of which bears (S74°00'00"W, 73.90 feet);

Thence S65°30'00"W, 56.59 feet.

Bearings are based on Grant County Survey No. 1517.

EXHIBIT A
LEGAL DESCRIPTION

Prepared by:
Cornerstone Surveying, Inc. 233 S.
Canyon Blvd
John Day, Or (541)575-
1813



Renewal Date 6/30/2018