

2. **Approval of warrant claims list for the period December 16, 2006 through January 16, 2007**
3. **Receipt of biweekly payroll reports for the period ending December 10, paid December 23, 2006, and ending December 24, 2006, paid January 6, 2007**

Council Member Scavuzzo made a motion to add an item to the warrant claims list for water mail replacement; the motion was seconded by Council Member Tynes and so carried. Council Member Tynes made a motion to approve the consent calendar as amended; the motion was seconded by Council Member Schellong and so carried.

PUBLIC HEARINGS

4. **Receive public comments on the US EPA Brownfields Community-wide Assessment Grants for Petroleum and Hazardous Substances contamination; no action necessary**

Will Caplinger, City Planner, reported. Mayor Burns opened the public hearing. No public comments were forthcoming and Mayor Burns closed the public hearing. No action necessary.

5. **Conduct public hearing on the Community Development Block Grant Program, Economic Development Allocation, Community Economic Enterprise Fund Component, to receive comments on the submittal phase of the grant, adopt the attached resolution authorizing the City Planner and the City Manager, as appropriate, to submit the grant application and to execute all amendments and related documents, and take action as necessary and appropriate**

Will Caplinger, City Planner, Eli Naffah, City Manager, and Susie Mendez, Housing Director, reported. Ms. Mendez will do a follow-up report on businesses that have been helped. Mayor Burns opened the public hearing.

Richard Miles, city resident, spoke about Fran Clark, and said that CDBG should be competitive and other agencies should be contacted. He also spoke about the County Cal-Works program, RHS programs, and contacting other agencies for their proposals. No other public comments were forthcoming and Mayor Burns closed the public hearing. Discussion followed and it was clarified that this money is only for micro-enterprise assistance.

Council Member Tynes made a motion to adopt Resolution 2007-01 authorizing the City Planner and the City Manager, as appropriate, to submit the grant application and to execute all amendments and related documents; the motion was seconded by Council Member Kolodner and so carried unanimously.

REPORTS

6. Chamber of Commerce

Patricia Medina, Chamber of Commerce Executive Director, reported on partnering with the SBDC for a workshop, the Visitors Bureau, and the annual chamber dinner.

7. Other reports relative to City of Crescent City programs, projects, and/or Council and staff travel and training reports

Council Member Schellong reported on her recent attendance at the Mayors and Leadership Academy and ethics training in Sacramento. Jim Barnts, Director of Public Works, reported there will be a pre-bid meeting at the cultural center tomorrow on the Waste Water Treatment Plant.

UNFINISHED BUSINESS

8. Adopt a resolution deciding an appeal of a Planning Commission decision rendered on September 14, 2006, regarding variance application #V-06-07, and take action as necessary and appropriate

Will Caplinger, City Planner, reported and pointed out that the granting of the appeal does not comply with the Government Code and the City Ordinance requirements that specify how a variance may be granted and the Government Code “trumps” us in this area, but our zoning is consistent with the Government Code. The primary requirement is that the property itself has some sort of special circumstance, be it size, shape, topography, location, and other related conditions, that don’t allow the property owner to comply with the zoning code and would deprive him of a material property right such as the development of his property. The property itself does not contain any special circumstance that warrants variance approval so under the Government Code and the local code, Mr. Caplinger does not believe the city council can legally grant this variance because that specific finding can’t be made. Another very important finding by the Government Code is that the action must be consistent with the local General Plan. The resolution denying an appeal, under item 2., that the denial of appeal is necessary to comply with General Plan policies 1.G.1 and 1.J.5 concerning community aesthetics and the design and appearance of commercial developments, and finding 1. that the decision of the Planning Commission was in compliance with the provisions of CCMC Chapter 17.56 regulating variances, and #., that the denial of the appeal is necessary to carry out the general purposes of the Crescent City Municipal Code, including, but not limited to, the establishment of land uses that conform to the objectives, policies, principles, and standards of the General Plan (CCMC Section 17.02.010). The second resolution granting an appeal has different findings, finding 1., that the granting of the appeal is in harmony with the general purpose an intent of the Crescent City Municipal Code and ensures that the spirit of the code is observed, public safety and welfare is secured and substantial justice done pursuant to CCMC Section 17.56.010, and 2., that the granting of the appeal is necessary to prevent undue hardship, pursuant to CCMC Section 17.56.010,

the section regulating variances. Mr. Caplinger asked that it be noted that he didn't feel that he could provide a finding that it is consistent with the Government Code or the General Plan as he does not believe the granting of the appeal would be consistent with either of the requirements contained in these document, and are believed to be essential to granting the variance. Regardless of the fact that it is a hardship on Mr. Pamplona, Mr. Caplinger believes the requirements of the Government Code would require that the council deny the appeal. Mr. Caplinger pointed out in the last paragraph of the staff report that the adoption of either resolution does not preclude the council's authority and ability to direct staff to effect any further resolutions of the problem that ease any hardship to the appellant. Extensive discussion followed. Mr. Caplinger explained that a use can only be "grandfathered" if it is legally established in the original case, which this was not. The first solution suggested by the City Manager at the previous meeting was that the city would pay for the cost of installation and removal of the chain link fence, then Mr. Pamplona would still be required, as he should have been in the original approval, to construct a solid wood or masonry fence. City staff met on-site with Mr. Pamplona and discussed the possibility of adding some conditions that the council might feel palatable if they were to approve the variance, which is not consistent with the Government Code or the Crescent City General Plan.

Thomas French, City Attorney, commented that the authority cities have over their land use regulations are magnificent. He also stated that when a city makes a mistake and it discovers its mistake, it has a duty to do things the right way, it doesn't alleviate the city from the duty of following its own ordinances or laws. Mr. French said that in his legal opinion, it set a dangerous opinion to say that every time a mistake is made, we need to just stick with it because we made a mistake.

Council Member Schellong asked about the outcome of paying Mr. Pamplona for the fence and him building the correct one to meet our General Plan. Mr. Caplinger stated Mr. Pamplona resisted that quite strongly. Council Member Scavuzzo asked how far back do we go in time to say something is not in compliance with our ordinances and Mr. Caplinger responded it is whenever an application comes up and then we review the project, it is specific to the project. Council Member Scavuzzo stated we have selective enforcement in this city. Council Member Tynes stated that if that is the case, as of January 16, 2007, is the day we decide we are not going to be selective any more, we are going to follow the rules and treat everyone the same way.

Council Member Schellong suggested developing a policy on how to deal with it when city staff makes a mistake if it costs the public dollars.

Joe Pamplona spoke and asked the city to leave the fence as it is because city staff and the former city manager approved it. He also stated if the city feels like that fence shouldn't be there, the city should go there, rip the fence out, pay for my expenses for the fence, my labor, and should compensate me to put a new fence up. If the city made the mistake, the city should be accountable for it.

Richard Miles, city resident, spoke about a bible story, his hopes that mistakes like this don't come up in the future, the lack of city staff, hiring Americorps people to assist city staff, and updating ordinances and codes.

Brett Wells, county residence, spoke about owning a business for 18 years and when he made a mistake, he had to correct it. Mr. Wells also commented that the city should replace the fence at no expense to Mr. Pamplona, but that Mr. Pamplona should not be compensated for the time he put in on the original fence because he still had to put up a fence.

Council Member Schellong asked about an estimate for a wooden fence and Mr. Pamplona responded it is about \$28 a foot. Council Member Scavuzzo reminded council and staff that there is a fence in question on another property line, a fence that can be seen through, that will have to be blocked and set back from the other fence. Eli Naffah, City Manager, suggested what could be done was to have Mr. Pamplona do the front and have the one side shared with the other property owner who is required by the city to do some improvements for their fence and their site, and have them share that cost. Council Member Kolodner stated the fence that would come down is not scrap, it could be used for other projects so it is not a total loss for Mr. Pamplona to take it down and put up a fence that is correct.

Will Caplinger, City Planner, recommended denying the appeal based on the requirements of the Government Code but still that does not preclude any sort of financial arrangement that we do to work out getting the fence that is compliant with the Crescent City Municipal Code and the General Plan. There should be a solid fence in there, but the denying of the appeal would ensure that is done. How that is done could go into the future, but the council needs to adopt one of the resolutions tonight to meet the 40-day requirement in the CCMC. Mayor Burns clarified that council could uphold the denial, but direct staff to work out how the fence is constructed to satisfy the requirements of the Municipal Code in the near future.

Council Member Schellong asked that it be on the record that we do plan on working this out with Mr. Pamplona so that he is not bearing the financial burden.

Council Member Scavuzzo stated that as he understands it, Resolution 2007-03 will grant the variance for which Mr. Pamplona is asking. Will Caplinger response was yes, but that he did not believe can be done under the Government Code. Council Member Scavuzzo asked why council was given two resolutions and Mr. Caplinger stated because Council Member Scavuzzo specifically asked Mr. Caplinger to prepare two resolutions. Council Member Scavuzzo stated we have a wide range of planning as far as the codes are concerned. Mr. Caplinger stated he did not think we can "trump" the Government Code. Council Member Scavuzzo stated that if we have police powers, then we have the right to decide what is, and what isn't and that he thought that Mr. Dave Wells and Lesley Orr, at the time, decided that at that time it was OK and that he (Council Member Scavuzzo) won't go against that.

Council Member Schellong asked what the ramifications are when Mr. Caplinger is going against the Government Code. Mr. Caplinger explained the Government Code is what establishes the police powers for the city and he does not believe, and the City Attorney should be able to confirm this, that we can trump state law in this area and does not think it is advisable. Mr. Caplinger stated you can deny the appeal, be consistent with the requirements of the Government Code and still come back with the same resolution that you would do in granting the appeal; granting the appeal is going against state requirements in this area and he does not think it is a good legal precedent to set.

Council Member Schellong asked whether we are going against Government Code as well when we approve other variances, and Mr. Caplinger stated no, because findings have to be made that the granting of the variance is consistent with the Crescent City Municipal Code, with the Government Code, and numerous other findings which are in both the Government Code and the Crescent City Municipal Code. We are very particular about making those findings and I'm very particular about advising the Planning Commission as to how they can support those findings in each one of our variance applications. We do run these variance applications and the public hearings in an extremely consistent manner. Council Member Schellong asked which part of this is going against state law and Mr. Caplinger stated the granting of the appeal because in order to grant a variance, certain findings have to be made: 1. That there is a special circumstance that is applied to the property, be it size, shape, location, topography, surroundings and so on. I don't think you can make that finding in good faith. Also, a finding of the variance is consistent with the local General Plan. I don't think you can do that in good faith as well because it is contrary to the policies that I have noted under item 2 in the denying of the appeal version. There are very specific General Plan policies that require high level community aesthetic commercial design and so forth and consistency with the Crescent City Municipal Code, which denying the granting of the appeal doesn't do any of these and basically flies in the face of our General Plan and Zoning Code.

Council Member Schellong asked if we have any kind of insurance that protects the city if we make a mistake and Thomas French, City Attorney, cited a case in the Bay Area in which a developer sued the city for a mistake and the developer lost at every turn. Mr. French stated the council's decisions stand after ninety (90) days under the code of Civil Procedure. If a person wanted to challenge a city council ruling, they would file what is called an administrative writ of mandate in the Superior Court and under 1054 of the Code of Civil Procedure, they have ninety (90) days in which to do that. So, regardless of what decision you make tonight, if whoever the appealing party is doesn't file a writ, then your decision stands and there would be no more exposure to the city regardless of which way it goes at that point.

Council Member Scavuzzo commented that "if we rule favorably in this motion that I made and nobody appeals it within ninety (90) days, then it stands and if we don't appeal this here and somebody else appeals the other decision within ninety (90) days, then they can appeal it, but if nobody does either way, then we're home free." Council Member Scavuzzo stated his motion stands and it is up to the rest of the council.

Council Member Scavuzzo made a motion to adopt Resolution No. 2007-03, a resolution of the City Council of the City of Crescent City, California granting an appeal of the decision of the Planning Commission on Variance Application No. V-06-07; the motion was seconded by Council Member Kolodner and so carried by the following polled vote:

AYES: Council Members Scavuzzo, Kolodner, and Schellong
NOES: Council Member Tynes and Mayor Burns
ABSTAIN: None
ABSENT: None

NEW BUSINESS

9. Presentation by the Local Child Care Planning Council (LCCPC) of Del Norte County

Doreen Wells, LCCPC Coordinator, gave a detailed presentation on childcare and answered numerous questions from the city council.

Richard Miles, city resident, spoke about childcare and the “Year of the Child.”

Council Member Tynes left the room at 7:53 p.m., and returned at 7:55 p.m.

10. Introduce and waive the first reading of a Municipal Code Amendment (#MCA 06-03) that will modify uses and height regulations in the C-M (Commercial Manufacturing) District, set the date for a public hearing, second reading and adoption, and take action as necessary and appropriate

Will Caplinger, City Planner, reported and discussion followed.

Bill Longsdale, city resident, spoke about open and public comments and asked that more detail be put in the posting for this public hearing.

Richard Miles, city resident, spoke in favor of the item, and about the American Hotels Company, tsunamis, and Bali.

Council Member Tynes made a motion to introduce and waive the first reading of a Municipal Code Amendment (#MCA 06-03) that will modify uses and height regulations in the C-M (Commercial Manufacturing) District, and to set the date of February 5, 2007 for a public hearing, second reading and adoption of the Municipal code Amendment; the motion was seconded by Council Member Schellong and so carried unanimously.

11. Consider the appointment of alternate planning commissioners as regular planning commissioners and take action as necessary and appropriate

Will Caplinger, City Planner, reported on the openings due to recent resignations of Nick Gargaetas and Temple Buchanan, and discussion followed. There were no public

comments. Council Member Scavuzzo made a motion to appoint the alternate planning commissioners, Richard Enea and Kirk Roberts, as regular planning commissioners; the motion was seconded by Council Member Tynes and so carried unanimously.

12. Consider and appoint members to boards, commissions and committees and take action as necessary and appropriate

Mayor Burns spoke about the appointments and asked for input on any changes. No action was necessary.

CITY COUNCIL ITEMS

Reports, Concerns, Referrals

The council directed staff to get the necessary statements ready for the auditors.

Council Member Scavuzzo asked about the asphalt on Front Street, and the recent flooding of main lines. Council directed staff to report back on flow meters.

Legislative Matters

Eli Naffah, City Manager, spoke about the League of California Cities and budgets.

CITY MANAGER DIRECTIVES – None

CLOSED SESSION

No action taken.

ADJOURNMENT

The meeting adjourned at 9:30 p.m.

ATTEST:

L. Dianne Nickerson, City Clerk