

May 19, 2008
6:00 P.M.
Newport, Oregon

The Common Council of the City of Newport met on the above date in the Council Chambers of the Newport City Hall. On roll call, Bain, Henning, Obteshka, Henson, Patrick, Bertuleit, and Sabanskas.

Staff attending was as follows: City Manager O'Neal, City Attorney Firestone, Community Development Director Bassingthwaite, Public Works Director Ritzman, Finance Director Riessbeck, Lieutenant Teem (for a portion), Police Chief Miranda (for a portion), and Sr. Administrative Assistant Wanda Haney.

PROCLAMATIONS, RECOGNITIONS, AND SPECIAL PRESENTATIONS

Public Works Week. Bain proclaimed the week of May 18-24, 2008 as Public Works Week. Ritzman accepted the proclamation.

National Safe Boating Week. Bain proclaimed the week of May 16-24, 2008 as National Safe Boating Week. The proclamation will be presented to the Coast Guard later.

Emergency Medical Services Week. Bain proclaimed the week of May 18-24, 2008 as Emergency Medical Services Week and presented the proclamation to Jeff Cress of Pacific West Ambulance. Cress stated that Pacific West is a community-based ambulance service that meets community medical needs in a timely, professional manner. He thanked the city for their continued support.

National Senior Health and Fitness Day. Bain proclaimed Wednesday, May 28, 2008, as National Senior Health and Fitness Day.

Recognition of long-time member of the Budget Committee, Phil Hutchinson. Bain recognized Phil Hutchinson for 27 years of service on the city's Budget Committee.

CONSENT CALENDAR

The consent calendar consisted of the following items:

- A. Approval of minutes from the work session, executive session, and regular meeting of May 5, 2008, and work session of May 12, 2008;
- B. Police & Fire Monthly Reports, April 2008;
- C. Report of claims for April, 2008.

MOTION was made by Sabanskas, seconded by Patrick, to approve the consent calendar as presented. The motion carried unanimously in a voice vote.

COUNCILOR'S REPORTS AND COMMENTS

Obtshka reported on a recent meeting of the Senior Citizens Advisory Committee. He noted that grant money is available from the OECDD for possible improvement of the basement of the senior center. He noted that the electric door and new cabinets have been installed at the senior center. He reported that the "Get Your Goat" fundraiser would be held on June 5-6, 2008. He noted that the third annual Geezer Games would be held July 5-6. Volunteers are needed for this event.

Sabanskas reported on a recent meeting of the Oregon Cascades West Council of Governments. She noted that SB 1061 provides a Medicaid increase of \$250 monthly for assisted living and nursing facilities. She reported that she attended the fifth water task force meeting. A resident survey is under development.

Bertuleit reported on a recent meeting of the Bicycle/Pedestrian Committee. He noted that several students had performed some CAD work regarding sidewalks in front of the Coast Guard station, and built a model to secure grants. He reported that he had attended a meeting of the South Beach Urban Renewal Ad Hoc Committee. This group will be looking at potential projects and the possible extension of the South Beach Urban Renewal District. He noted that the Airport Committee meeting would be held tomorrow.

Patrick announced that the Port of Newport would host a cruise ship discussion on June 9, 2008, at 7:00 P.M., at the PAC. She reported that she had gone to Astoria and watched the arrival and operations of the cruise ships at that location.

OFFICER'S REPORTS

Report of the Mayor. Bain reported that he attended the Oregon Transportation meeting where the final review on Connect Oregon II applications was held. The city's project was well received, and will likely be funded. The next meeting is June 19 in Enterprise, Oregon. Bain noted that ODOT has signed the final back-to-work orders on the Highway 20 project; and the contractor is gearing up to resume work. Bain mentioned that the City has been meeting with the taxing districts that will be impacted by the potential extension of the South Beach Urban Renewal District. A meeting was held with OCCC and the Port of Newport. He explained the consideration to extend the South Beach Urban Renewal District for five or ten years, and the effect of the extension.

Report of the City Manager. O'Neal added that it would take time to meet with all of the taxing districts. He noted that work has begun on the old city hall. Monday is the Memorial Day holiday, and city offices will be closed. O'Neal announced that the Public Works Week luncheon would be held on Wednesday, May 21, from noon to 2:00 P.M.

PUBLIC COMMENT

Emma Velasco spoke regarding the Georgia Pacific agreement. She noted that the bond should be in excess of \$20,000.

ACTION ITEM

Audit Service Contract Award. O'Neal noted that two proposals had been received for auditing services. He stated that every five to seven years it is good to change auditors in order to get a fresh look. He noted that staff is recommending a contract be awarded to Pauly, Rogers, and Company for auditing services.

MOTION was made by Sabanskas, seconded by Patrick, to award an audit services contract to Pauly, Rogers, and Company.

Riessbeck added that she would recommend awarding a contract for a three-year period with a possible two-year extension. She noted that Pauly, Rogers, and Company conduct audits for several coastal organizations.

AMENDED MOTION was made by Sabanskas, seconded by Patrick, to award an audit services contract to Pauly, Rogers, and Company for a three-year period with a two-year possible extension. The motion carried unanimously in a voice vote.

O'Neal noted that the goal is to have the audit done by December 31.

At 6:40 P.M., Bain recessed the meeting until 7:00 P.M.

PUBLIC HEARINGS

Public hearing to consider adoption of File Nos. 1-CP-08 and 2-CP-08 as part of the Transportation System Plan Update. Bain opened the public hearing at 7:00 P.M. Bassingthwaite introduced the matter. He noted that the current Transportation System Plan (TSP) was adopted in 1997. The update consists of three major components. The two being considered tonight are: 1.) Newport central core areas (north side of the Bay) (File No. 1-CP-08 - North Side Local Street Plan); and 2.) Newport Pedestrian and Bicycle Plan (File No. 2-CP-08). Bassingthwaite explained the background of the update, which involved considerable public process. He noted that the Planning Commission recommended some modifications, which he described and discussed. Bassingthwaite entered into the record the entire materials from both files. He noted that trails related to transportation are within the TSP, and recreational trails are in the Parks System Master Plan. Even though it is possible to consolidate these as some communities have, Bassingthwaite recommended maintaining the status quo.

Jerry Kern, a member of the Yaquina Wheels Bicycle Club, raised questions and provided information. He noted that his main concern is the safety of the proposed bike route down Fogarty Street instead of John Moore Drive. He suggested dropping the 2nd Street footbridge down to Tier 3 and removing the bike route down Fogarty Street. He noted that he is concerned that most of the information the Bicycle/Pedestrian Committee provided is placed in the back. Bassingthwaite assured him that the consultant would take that information and include it in the project list as recommended by the Planning Commission.

Janet Webster spoke in support of the Planning Commission recommendations, especially including the information the committee had added to it. She said that she realizes there is a difference between TSP and recreational, but noted that connectivity is the goal. Another part of the addendum was a connection from NE Crestview Place through San-Bay-O Circle to Frank Wade Park, which promotes the “Safe Routes to School” program. She noted that she is in favor of the addition of this linkage.

MOTION was made by Sabanskas, seconded by Patrick, to continue the hearing on File No. 1-CP-08 and 2-CP-08 to the City Council meeting on June 16, 2008, and have the consultant make the following changes: change the bicycle route from Fogarty Street to John Moore Drive; change the 2nd Street footbridge to a Tier 2 or 3; add the linkage from NE Crestview to Frank Wade Park; and move forward on the Planning Commission recommendations. The motion carried unanimously in a voice vote.

Consideration of an agreement with Georgia Pacific for use of rights-of-way for a treated effluent pipeline. Bain opened the public hearing at 7:30 P.M. Firestone delivered a PowerPoint presentation and gave the historic background of the Georgia-Pacific (GP) effluent pipeline. Firestone noted that there are two pipelines and described their locations. One was granted by an easement, and one was granted through a franchise agreement, which has lapsed. GP has operated one or more pipeline for at least fifty years. DEQ gave GP a discharge permit to discharge treated effluent into the ocean approximately 400 feet out from Nye Beach. Since the lapse of the agreement was discovered, the city has been in discussions with GP for more than a year. Council received a copy of a lease agreement in the packet, and Firestone distributed a copy that included changes suggested by GP. He explained that the agreement is for ten years at \$10,000 per year, plus \$500 or every day that GP exceeds DEQ permit standards.

George Ragsdale, an attorney for GP, spoke in support of the agreement and provided information. Ragsdale distributed a drawing showing the two effluent pipelines. He explained that GP does not use both lines at the same time; one is for backup. The map indicated one line in orange, one in green, and where they come together was indicated in blue. He said that the orange line is included for the rights-of-way agreement. The green and blue lines are covered by easements. Ragsdale said that he believes one line was built in 1965, and the other in 1983. He noted until several years ago there was a franchise agreement. The new payment is \$10,000 annually with a penalty; and the payment under the old agreement was \$250 annually paid on a five-year basis. Ragsdale clarified the three changes GP had made to the license were: 1.) It requires quarterly reporting, but since GP report to the state on a monthly basis, they will provide the same information to the city. 2.) Under Section 5., each time the agreement comes up for renewal, adjustments will be made to the insurance requirements. 3.) Insertion of the word “reasonably.” It requires GP to do whatever is reasonably and economically feasible if the lines are abandoned. Ragsdale said the lines are already there, they are just asking the right to use the line in the ground.

Melinda McComb provided information and raised questions. McComb distributed a packet of information. She talked about the need for right-of-way appraisal. She expressed concern regarding the secrecy of the pipeline locations. She noted that her packet included a 1998 letter from GP asking for leachate. McComb asked the City Council to do their due diligence and not get all of their documents from GP.

Roger Hart spoke in opposition. He addressed sections of the contract and filled in information on the monitoring program. He noted that if the outlet clogs up, pressure builds up and can back up to Newport. He noted that there has not been testing to determine the toxicity levels. He suggested adding language providing for increased monitoring. He said this affects the tourist industry, and he would like to see a study done to see what the dollar value is to Newport. Hart referenced an article from the Statesman Journal entitled "Inventory of a Spill" by Beth Casper. He stated that the pipeline is worth a million dollars to GP, and they are offering \$10,000.

Quitze Rose Pilling spoke in opposition. Pilling noted that on the Google Map you could see the effluent. She said the pollution is outside the mixing zone, and it is scary that it touches the beaches. She added that she has gotten a rash while swimming at Nye Beach. Pilling said it is the city's job to protect people.

Carla Perry provided information. Perry asked the city to hold GP to the highest level of accountability. She noted that GP is part of Koch Industries, which is a global, privately held company based in Wichita, Kansas, and in 2002 was ordered to pay one of the largest fines for oil spills. Perry asked for no more than a 5-year contract that must be renegotiated for subsequent renewals. She encouraged the city to ask for full disclosure of origins and details of what it is.

Charlie Plybon, representing the Surfrider Foundation, raised questions and provided information. He distributed a fact sheet containing recommendations. Plybon asked that before any consideration with GP, the City Council should consider his recommendations. He displayed an aerial photo showing the area of discoloration. He noted that there have been no tests to determine whether it is harmful to human health or swim in the mixing zone. The fact sheet included suggestions for the lease agreement.

Lisa Voelker spoke in opposition. She expressed concern about the effluent brought over from Marion County and DEQ's statement that they could not get rid of it anywhere else. She said we could not continue to do business as usual and consider the ocean as an open cesspool. She added that we must think about our actions and change the way we live, as there is no price for the health of our ocean.

Susan C. Pilling spoke in opposition and raised some questions. Pilling said that over a year ago they informed the City Council that the pipeline is inadequate. She expressed concern that this effluent may be contributing to the complaints against the city sewer and the bacteria levels. Pilling said it is an economic issue, and it has to be more expensive for corporations to pollute than not to pollute; otherwise, there is no incentive. Pilling would like to see adequate compensation for independent monitoring and is opposed to the "in perpetuity" clause.

Jenny Stokes spoke in opposition. Stokes suggested giving GP ten years to remove the pipeline, filter it, and use it for a playground.

Don Hawkyard, a member of the Surfrider Association, spoke in opposition. He stated that because of weird-smelling foam down river, GP installed this line to relocate the odor to the ocean. He said GP is pumping 11 million gallons a day. This pollution is moving from Nye Beach up to Agate Beach and south. Hawkyard stated that he has seen weird foam appear at Agate Beach but thought it was a biological process. He asked that Council not allow GP to pollute the beaches. He asked that they consider any agreement to be temporary and conduct research prior to a long-term agreement. He suggested that GP should fund any research that is conducted.

Sally Carr spoke in opposition and raised questions. Carr said that she often hears radio announcements on the Eugene station warning about Nye Beach. She said it is important for visitors to Newport to know that they are coming to a place that will not harm their health. Carr asked Council to delay any action until all aspects can be studied.

Nyla Jebousek spoke in opposition to, provided information, and raised questions. Jebousek noted that Council is charged with protecting Newport. She said that GP is using Nye Beach as their toilet. She noted that at last week's work session the biggest thing she heard was "I don't know." She stated that the process needs to be slowed down and there needs to be a task force and a detailed study. She supported the suggestion of an appraisal, but the parameters of this issue are much greater. She stated that there is an effect on tourism, and it affects the respect the city is getting in the state. Jebousek noted that bacteria counts are unacceptable. She inquired as to whether GP received regional leachate, and whether the GP ponds had been tested. She said GP received \$800,000 in a month for disposal, while Newport received \$250 annually. She said that there are so many unknowns, such as what chemicals are in the pipes and what the condition of the pipes. Jebousek suggested the term should be for five years in conformance with the term of the DEQ permit.

Cindy Ashy raised questions. She suggested a map of the lines be available at city hall and the library. She disagreed with the license agreement provision that requires the city to keep confidential all as-built plans submitted by GP. She noted that when many of the homeowners along the pipeline bought their homes, they were not aware that the public easement for utilities included the GP pipeline. Some of these homes have shallow wells, and she recommended the ground water be tested along the entire path of the pipeline. Ashy said that she would like the city to add language that does not allow DEQ to decide what effluent goes through the pipeline, because without that, DEQ can lump in other effluent into the permit. She suggested very clear language noting that no effluent from other sources be allowed in the lines. Ashy suggested that it was unfair to let citizens and visitors in the water, where this plume is, without the knowledge that the effluent is in the water. She suggested installation of a large sign warning of industrial effluent and outlining some of the contaminants. Ashy asked that the record reflect that in April 2006, she went to the coordinator and a board member of the Mid-Coast Watershed Council asking them to look into this issue; and what came out of that meeting was a threat to her.

Maria Swan spoke in opposition to, provided information, and raised questions. Swan said she was glad to hear Ashy's suggestion of a large sign because people are getting sick on the beach. Swan said that signs were posted, but thought they were taken down during tourist season. Chemicals like mercury and lead are used, which goes through the skin and into food fish. She expressed concern that there will be lawsuits if people get sick or die. Staff noted that there are signs in the area that are closed unless DEQ notifies the city of health issues, at which time the signs are opened.

Ellen Bristow spoke in opposition to and raised questions. Bristow noted that the health, safety, and economic stability of the community should be the first priorities of the city. She said this would affect hotels and fisheries. She noted that she believes that "perpetuity" is off the table, and that the rights-of-way contract needs to be more cash aggressive. Bristow recommended renegotiating every five years in conformance with the term of the DEQ license. She requested that the City Council reconsider.

Daniel T. McCarthy provided information and raised questions. McCarthy said that as an attorney, he looked at the agreement and his sense is that it should be less friendly for the benefit of the citizens. He expressed surprise that the 3rd Street easement was not part of this arrangement and recommended it be made part of this consideration. McCarthy noted that he sees no reason for the “in perpetuity” clause. He noted that it is a great idea for the city to have some say as to what goes into the pipeline. In this way, the city could impose stricter standards than DEQ’s minimum standards. McCarthy noted that some of his biggest concerns are the weak penalty provision, the weak insurance requirements, and the City’s ability is to revoke the agreement.

Marcia Schwartz spoke in opposition. She noted that when it is more expensive for GP to honor the agreement, they could declare bankruptcy. She questioned whether allowing GP to self-insure is a good idea unless that insurance can be protected from bankruptcy. She suggested that it is not unreasonable to ask GP to fund environmental expenses such as the cost of soil samples and payments for disposal.

Maria Sause spoke in opposition and raised questions. Sause inquired how GP received initial permission to dump this effluent, and who was consulted before that authority was given. She noted that a consideration before issuing a permit is the way in which dumping has been monitored in the past. She said that she understands that the samples used for monitoring the effluent have not been taken from the ocean, so it is unknown what heavy metals and toxic substances are accumulating.

Sam Valenti raised questions. Valenti said that he was surprised when he saw the satellite picture of Nye Beach showing the size and darkness of the discharge from the GP pipe. He noted that he became concerned about surfing close to the wastewater-mixing zone. He encouraged the City Council to set aside a portion of the fee increase for studies to assure there are no health hazards.

Glen Leon Green Peace spoke in opposition. He said that this should have been stopped ten years ago.

Melinda McComb spoke and referred to Mo McEntee’s book that addresses GP’s effluent. McComb noted that the title reports do not show the nature of the utilities in the easement, and people are buying and selling houses without knowing they have an effluent line on their property. She expressed concern that maps were unavailable anywhere in the county. She suggested that the maps were confidential due to liability. McComb noted that everybody along the pipeline needs to be notified because GP is encumbering fee simple titles.

George Ragsdale reiterated that the issue is a licensing agreement to operate the second pipeline, because there is an easement allowing them to operate the one pipeline. He stated that the second pipeline exists for safety reasons. Ragsdale said that GP does not understand people’s concerns. He noted that GP is within the purview of DEQ regulations, and environmental issues are addressed by DEQ. Ragsdale said that he hopes the city can remain focused on GP’s request, which is the use of the second pipeline that is already in the ground.

The Council discussed bringing this matter to an upcoming Council meeting. Staff was directed to consider issues, including that a fixed term seems to be preferable to an “in perpetuity” arrangement. It was noted a task force could be formed to work through these issues if staff thought that would be helpful. Council agreed that the important issue is about the health and safety of Newport. Bain noted that there were some comments

tonight about bankruptcy, but the city has discussed a bond or deposit. Bain added that the Council appreciates citizen participation.

MOTION was made by Sabanskas, seconded by Henson, to refer this matter to the city manager and city attorney for further consideration and bring it back to the next City Council meeting. Firestone inquired as to whether notice would go to residents living along the pipeline. The Council consensus was that it would. Clarification was made to the motion that this matter would appear at the June 16 City Council meeting. The motion carried unanimously in a voice vote.

ADJOURNMENT

Having no further business, the meeting adjourned at 9:40 P.M.

Wanda Haney
Sr. Administrative Assistant

William D. Bain
Mayor