

December 9, 2013
6:00 P.M.
Newport, Oregon

The City Council of the City of Newport met in a Special Meeting, on the above date, in the Council Chambers of the Newport City Hall. On roll call, Allen, Roumagoux, Sawyer, Busby, Beemer Saelens, and Swanson were present.

Also attending were Ted Smith, Interim City Manager, Peggy Hawker, City Recorder, Derrick Tokos, Community Development Director, Bob Gazewood, Interim Finance Director, and Jim Protiva, Parks and Recreation Director.

Also in attendance was Dave Morgan from News Lincoln County, Larry Coonrod from the Lincoln County Dispatch, and Wyatt Haupt, and Dennis Anstine (arrived later during the meeting) from the Newport News-Times.

PLEDGE OF ALLEGIANCE

Council, staff, and the audience participated in the Pledge of Allegiance.

Roumagoux noted that this is Smith's last meeting as Interim City Manager. On behalf of the City Council, she thanked him for the excellent job he has done as Interim City Manager for past six months. Roumagoux noted that Smith is easy to work with, direct, honest, and she added that she understands why the Library staff is anxious for his return.

CONSENT CALENDAR

The consent calendar consisted of the following item:

- A. Approval of minutes of Special City Council Meeting - December 2, 2013.

MOTION was made by Beemer, seconded by Allen, to approve the minutes of the December 2, 2013 Special City Council meeting as presented. The motion carried unanimously in a voice vote.

ACTION ITEMS

Consideration of Resolution No. 3657 - Continuing Disclosure Policy and Procedures. Gazewood reported that the issue before Council is the consideration of Resolution No. 3657 which, if adopted, would enact a continuing disclosure policy and procedures. Gazewood noted that prior to selling the \$7,900,000 general obligation bonds, for the new indoor municipal swimming pool, the city's financial advisor is required to take a comprehensive look at the city's continuing disclosure undertakings and filing history, and then make sure that any filings missed over the last five years are taken care of. He added that when the city issues debt in the public market, the city enters into a continuing disclosure agreement to provide ongoing financial information to

investors. He stated that the agreement requires the city to provide its annual financial statements and certain financial information, as well as notice of material events. Gazewood noted that the financial advisor determined from its review of the city's continuing disclosure undertakings and history that the city failed to make its annual disclosure filings for multiple years on multiple bond issues. He added that the disclosure filing deficiencies were required to be disclosed in the Preliminary Official Statement related to the sale and issuance of the bonds for the municipal swimming pool. He noted that these deficiencies are described in information contained in the packet. He stated that the city was required to develop a policy to ensure future compliance with continuing disclosure requirements. He added that the policy, described as Exhibit A and attached to Resolution No. 3657, was accepted by the financial advisor and incorporated into the Preliminary Official Statement in summary format. He noted that the policy was also forwarded to, and approved by, bond counsel. Gazewood reported that the bid opening is Thursday and the successful bidder should be known quickly. He added that the actual closing of the bond sale will be December 19. Gazewood reported that the public can buy the bonds from the successful bidder. Busby asked that Council be added to the distribution list as outlined in the policy.

MOTION was made by Sawyer, seconded by Swanson, to adopt Resolution No. 3657, a resolution regarding Continuing Disclosure Policy and Procedures with the amendment to the policy recommended by Busby. The motion carried unanimously in a voice vote.

DISCUSSION ITEMS

Tax-Exempt Bond Post-Issuance Compliance Policy. Gazewood reported that development of a post-issuance compliance procedure for bonds is recommended by bond counsel. He stated that information included in the packet shows that after the bonds are issued, a Form 8038-G is required to be filed with the IRS. He noted that the form requires that the city indicate whether it has established written post-issuance compliance procedures to ensure compliance with the arbitrage and the private business use rules imposed on tax-exempt bonds and bond-financed facilities. He added that the intent is to make sure that the bonds remain tax exempt. Gazewood reviewed the sample policy that was included in the packet. He noted that the City Manager would be responsible for designating a Bond Compliance Officer. Gazewood added that the policy would require an annual reporting. He noted that with a policy in place, the IRS would be less likely to fine the city at the maximum amount allowed. He reviewed potential problems that could occur without the policy. He recommended adopting the policy to hold the city accountable. Council directed staff to prepare the policy for adoption by resolution at an upcoming Council meeting.

Allen noted the verbiage on page two "nationally recognized bond counsel law firm," and added that he understood that the city's bond counsel is a "nationally-recognized bond counsel law firm." Gazewood confirmed that it is his understanding as well.

COUNCIL COMMENTS

Sawyer stated that he is glad to hear that Rob Connell is recovering.

Sawyer reported that children were sledding on his street during the recent snow.

Saelens reported that the Bicycle/Pedestrian Committee will be meeting tomorrow, and the Parks and Recreation Committee will be meeting next week.

Roumagoux reported that she attended the November 24 Thanksgiving dinner at the Senior Center.

Roumagoux reported that she attended a recent YBEF meeting at the Aquarium.

Roumagoux reported that there are two upcoming marine-related conferences that will occur in Newport. She noted that Ruby Moon has been hired to assist Kaety Hildenbrand. Allen noted that Moon's work will be primarily educational.

Roumagoux reported that she had received a request from the Lincoln County Board of Commissioners to select a date for a joint meeting. Council selected January 15, 2013, at 6:00 P.M., at City Hall.

Roumagoux reported that a public hearing for a ten-year review of the Nye Beach Design Overlay District will be held at the evening meeting of December 16.

Allen asked whether a discussion of Big Creek Road was scheduled on December 16, and it was noted that this item will be on that agenda.

Busby reported that he had been selected for jury duty next month.

Busby reported that the Airport Committee will be meeting tomorrow to discuss minimum standards, Part 139 certification, and other matters.

Beemer reported that he plans to attend a meet and greet with finalists for the Port Director's position.

Allen reported that an Infrastructure Task Force meeting was held on December 5, and another is scheduled on December 19. He noted that a recommendation is expected to be presented to the City Council at its first meeting in January.

Busby reported that a discussion on the formation of a business license ordinance review task force will be held at the December 16 work session.

BREAK

Council took a break from 6:40 - 7:00 P.M.

PUBLIC HEARING

Public Hearing on the LUBA Remand of the Teevin Brothers Traffic Impact Analysis.

Roumagoux opened the public hearing on the LUBA remand of the Teevin Brothers Traffic Impact Analysis at 7:00 P.M.

Roumagoux noted that the public hearing is to consider whether supplemental information provided by Teevin Brothers Land and Timber Company addresses shortcomings in its Traffic Impact Analysis (TIA) identified in Land Use Board of Appeals (LUBA) Final Order and Opinion No. 2013-057. She added that the Traffic Impact Analysis was required for the construction of a log yard at 1650 SE Bay Boulevard.

Roumagoux reported that following an appeal of the city's original approval, LUBA determined that the Traffic Impact Analysis did not clearly address the intersection of SE Running Springs Road and SE Yaquina Bay Road and remanded the application back to the city for further consideration of this narrow issue.

Roumagoux stated that testimony will be limited to issues contained in the LUBA decision that led to the remand and whether or not the applicant has adequately addressed those issues.

Roumagoux asked whether any Council members needed to disclose any conflicts of interest, bias, ex-parte contacts, or site visits.

Allen reported that site visits are ex parte communications, and that he has driven through the intersection in that area, and read several recent online and print articles on this and other matters relative to the use of the Port's International Terminal.

Beemer reported that he had made a specific trip to see where Running Springs Drive intersects with the Bay Road.

Busby reported that he has been through that intersection many times.

Swanson reported that she has read news articles.

Saelens reported that he has driven to the location and read articles.

Sawyer reported that he has driven there; has friends there; and recalls when the street was constructed.

Roumagoux asked whether there was anyone in the audience who objected to any of the Council members hearing this appeal. There was no objection.

Roumagoux stated that Oregon land use law requires several items to be read into the record at the beginning of each public hearing. She added that the applicable substantive criteria upon which the application will be decided are found in Chapter 14.45 of the Newport Municipal Code. She stated that these criteria are addressed in the draft final order and findings of fact included with the staff report and will be read and summarized by staff during the presentation. She added that all testimony, arguments, and evidence presented must be directed toward these criteria or other criteria in the Newport Comprehensive Plan or Newport Municipal Code which the speaker believes to apply to the decision.

Roumagoux stated that the failure of anyone to raise an issue accompanied by statements or evidence sufficient to afford the Council and the parties an opportunity to respond to the issue will preclude appeal to LUBA based on that issue.

Roumagoux stated that an issue which may be the basis for an appeal to LUBA shall be raised not later than the close of the record, at this hearing, or following this evidentiary hearing. She noted that such issues shall be raised and accompanied by statements or evidence sufficient to afford the city decision makers and the parties an adequate opportunity to respond to each issue.

Roumagoux reported that the failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to allow the city to respond to the issue precludes an action for damages in circuit court.

Roumagoux stated that the City Council may, at the request of a participant or on its own accord, continue the hearing to a date certain to provide an opportunity for persons to present and rebut new evidence, arguments, or testimony related to the approval criteria.

Roumagoux stated that staff and the applicant will be allocated up to 20 minutes each for presentations. She noted that the applicant will also receive up to ten minutes for final rebuttal. She added that all others wishing to testify will be given three minutes each.

Roumagoux noted that the order of testimony would be: 1. Staff reports; 2. Communications received and entered into the record; and 3. Testimony from citizens that have completed a speaker card.

Roumagoux asked for the staff report. Tokos reported that the issue before Council is to hold a public hearing to consider whether or not analysis contained in a November 26,

2013 memorandum from Kittelson & Associates, Inc. adequately responds to a remand from the Oregon Land Use Board of Appeals (LUBA) and satisfies city criteria for evaluating Traffic Impact Analysis (TIA) applications as it pertains to the intersection of SE Running Springs Road and SE Yaquina Bay Road.

Tokos reported that on November 6, 2013, LUBA issued Final Opinion and Order No. 2013-057 remanding the City of Newport's decision to approve a TIA application submitted by Teevin Brothers Land and Timber Company, LLC for a proposed log yard at 1650 SE Bay Boulevard. He noted that the rationale for LUBA's remand was limited to the narrow issue of the TIA having failed to adequately address the intersection of SE Running Springs Road and SE Yaquina Bay Road. Tokos noted that the criteria that the City of Newport applies to TIA applications are discretionary. He stated that this requires that a land use decision be made applying the relevant criteria in the Newport Municipal Code (NMC) Section 14.45.050 to the intersection of SE Running Springs Road and SE Yaquina Bay Road. He reviewed the relevant criteria.

Tokos reported that Teevin Brothers Land and Timber Company, LLC, through its agent Kittelson & Associates, Inc., submitted a supplemental memorandum dated November 26, 2013 analyzing traffic operations at the affected intersection. He added that the analysis was reviewed and accepted by the City Engineer by a memo of that date.

Tokos reported that a notice of the December 9, 2013 public hearing was provided to the applicant, appellants, property owners within 200 feet of the proposed log yard, persons who provided written testimony on the application prior to the remand, and affected utilities and city departments. He added that the notice was mailed on November 19, 2013. He added that a notice of the hearing was also published in the Newport News-Times on November 30, 2013.

Tokos reported that a letter had been received from Mike Becker, a resident of Running Springs Drive, in support of the application.

Tokos noted receipt of, and read into the record, a letter from attorney Sean Malone, dated December 5, 2013.

Tokos stated that a copy of the draft final order, findings of fact, November 26, 2013 Kittelson & Associates, Inc. memorandum, and the City Engineer's response, were available for public inspection seven days in advance of the December 9, 2013 hearing.

Roumagoux called for testimony from the applicant and proponents who have completed public comment forms.

Eric Oien, General Manager of Teevin Brothers Ranier operation, stated that his company stands by the findings and feels confident that they meet the remand requirements of LUBA. Allen referenced a letter from Sean Malone regarding all site-access points and intersections. Oien noted that LUBA already approved driveways within a 500 foot access spacing, other than an intersection.

Mike Becker, a resident of Running Springs Drive, reported that he had talked with six of the eleven resident families on Running Springs Drive, and had not found anyone who had been spoken with about safety issues. He stated that it was his opinion that there is not a safety issue at the entrance of Running Springs Drive onto the Yaquina Bay Road. He added that there is good visual access both ways. He noted that the neighborhood is mostly in favor of the log yard. He added that his greatest concern is what would happen to the property taxes if the Port could not use the facilities and had to start making up bond payments through taxes. He stated that he is more concerned with the intersection of

Moore Road and Bay Boulevard. He noted that he has less of an issue with professional drivers than tourists. He stated that he is supportive of the project.

Warren Chopp, a resident of Running Springs Drive, stated that he has two safety issues. One is the need for a no passing zone on the Yaquina Bay Road, and the other is that the mailboxes need to be relocated away from the road.

Roumagoux called for testimony from opponents who have completed public comment forms.

Stella White began to address Council on matters outside the scope of this hearing, and Roumagoux reminded her that this hearing was on very narrow criteria.

Maria Sause began to address Council on matters outside the scope of this hearing, and Roumagoux reminded her that this hearing was on very narrow criteria.

Rio Davidson addressed Council regarding the intersection of Running Springs Drive and Yaquina Bay Road. During his testimony, he began to address Council on matters outside the scope of this hearing and Roumagoux reminded him that this hearing was on very narrow criteria. Davidson reported that another company (Alcan) is planning a debarking operation in Siletz and anticipates bringing the debarked logs to the International Terminal for shipping.

Allen noted that the previous speaker, Rio Davidson, had brought up an issue during his testimony regarding another potential log exporter (Alcan) using the International Terminal. He asked Tokos for a clarification. Tokos reported that since Alcan has not officially declared its intent through permit applications or other means, Teevin Brothers is not required to consider the additional truck traffic in its TIA, and since there has been no declaration of intent, the plans are speculative at this time.

Roumagoux closed the public hearing at 7:40 PM

MOTION was made by Swanson, seconded by Beemer, to adopt Order No. 2013-4, establishing that the November 26, 2013 memorandum from Kittelson & Associates, Inc. has addressed deficiencies in the Teevin Brothers log yard traffic impact analysis application, as identified in LUBA Final Opinion and Order No. 2013-057, and that the application satisfies applicable approval criteria contained in the Newport Municipal Code. The motion carried unanimously in a voice vote.

PUBLIC COMMENT

Rio Davidson reported that Mike Peterson had left town because of the way it is being run. He noted that the citizens had not been given ample opportunity to weigh in on this issue. Davidson noted that the city would be receiving a financial windfall from the lease with Teevin Brothers. Sawyer reported that there were many hours of hearings and the city received many letters and e-mails regarding this issue. In response to Davidson's comment about the city's financial windfall from the lease with Teevin Brothers, it was noted that the city has no control or jurisdiction over the lease agreement as it is with the Port of Newport.

Yale Fogarty, president of the local ILWU, reported that log trucks pay a substantial highway tax. He noted that he does not know what the Port's profit will be, per ship, but suggested that it could be \$80,000 - \$100,000. He stated that this operation will create jobs and pour millions of dollars into the community in wages. He added that he will support the City Council at the ballot box.

Maria Sause spoke in opposition to the Teevin Brothers facility due to its impact on the environment, safety, and other issues.

ADJOURNMENT

Having no further business, the meeting adjourned at 8:00 P.M.

Margaret M. Hawker, City Recorder

Sandra N. Roumagoux, Mayor