

May 15, 2017
6:00 P.M.
Newport, Oregon

CITY COUNCIL MEETING

ROLL CALL

The Newport City Council met on the above date in the Council Chambers of the Newport City Hall. On roll call, Goebel, Swanson, Allen, Sawyer, Engler, Roumagoux, and Saelens were present.

Staff in attendance was Spencer Nebel, City Manager; Peggy Hawker, City Recorder/Special Projects Director; Derrick Tokos, Community Development Director; Mike Murzynsky, Finance Director; Rob Murphy, Fire Chief; Tim Gross, Public Works Director; and Jason Malloy, Interim Fire Chief.

PLEDGE OF ALLEGIANCE

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

PROCLAMATIONS, PRESENTATIONS, AND SPECIAL RECOGNITIONS

Oath of Office - Aaron Bales - Police Officer. Malloy introduced newly-appointed Police Officer, Aaron Bales. Hawker administered the oath of office, and Officer Bales wife pinned his badge.

Proclamation - Emergency Medical Services Week - Accepted by Monica Valencia from Pacific West Ambulance. Hawker introduced the agenda item. Roumagoux read the proclamation. The proclamation was presented by Roumagoux and Murphy, and accepted by Monica Valencia, of Pacific West Ambulance.

CONSENT CALENDAR

The consent calendar consisted of the following items:

- A. Approval of minutes from meeting of May 1, 2017;
- B. Approval of minutes of the work session of May 1, 2017;
- C. OLCC application - Wolf Tree Tap Room;
- D. Administrative approval of annual OLCC renewals.

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

PUBLIC HEARINGS

Continuation of a Public Hearing on Appeal of Encroachment Permit Issued for Property at 552 NW 56th Street. Hawker introduced the agenda item. Allen indicated that

he has had an opportunity to review the materials that he missed during the April 17, 2017 Council meeting. He stated that he believes he is up to speed on the issue. Roumagoux opened the continued public hearing at 6:14 P.M. Roumagoux asked whether anyone in the audience had a concern with any member of Council, or the Council as a whole, in hearing this issue. There were no concerns. She stated no written comments had been received. She asked if someone wished to speak who had not completed request. Tokos reviewed the criteria for the encroachment and the standards the encroachment was based on.

Nebel reported that at the April 17, 2017 Council meeting, a public hearing was held related to an encroachment permit that was issued to the owner of property located at 552 NW 56th Street to allow for the moving of a house. He stated that the hearing was continued to May 15, 2017 since neither the homeowner or the appellant were present. He added that the appellant requested that the hearing be held after May 1, 2017. He stated that testimony was taken at the public hearing, and an excerpt of the minutes from this hearing is included in the packet. He added that the city has since received a letter from Darlene Croteau supporting the encroachment.

Nebel reported that the city reviewed a request to relocate a home located at 552 NW 56th Street 25 feet south of its current location. He stated that the existing structure is located within a few feet of the current edge of the drop-off to the Pacific Ocean. He added that engineering staff reviewed the request to relocate the home elsewhere on the lot, but unfortunately, reviewed the wrong property, and indicated there were no objections to moving the house back 25 feet. He noted that on review of the correct property, it was determined that this location would be too close to a storm sewer manhole. He stated that the property owners indicated they would take responsibility for any damage that would occur to the storm sewer or manhole, and it was the city's intent to allow the structure to be moved to the proposed location.

Nebel reported that the property owner did not indicate that the proposed location of the house would encroach on an existing easement that crosses the property. He stated that on March 14, 2017, an application for the encroachment permit was submitted by Robert Rook, contractor on behalf of the owner, to encroach within the right-of-way. He added that an easement encroachment was granted because of the hardship that this property is facing due to the eroding bank. He noted that the easement would place the building within seven feet of the sewer manhole, but that the Municipal Code provides that a setback of seven feet must be maintained between the north edge of the existing sewer manhole and the closest point of the located residence. He stated that Rook indicated this was problematic in that a new design for the foundation may need to be completed in order to make this adjustment, which would only allow the house to be moved back 23 feet instead of 25 feet. He added that the Municipal Code provides that a notice of decision relating to the easement encroachment must be issued to the applicant, property owner, and owners of adjoining property within 200 feet of the boundary of the proposed encroachment. He noted that as a result of this notice, Richard Zhao and Helen Pang, owners of property at 556 NW 56th Street, filed an appeal of the decision allowing the encroachment within the easement. He added that the city has also received letters from Helen McFarland and Freda and Charles Vars expressing concerns with the plans to relocate the house.

Nebel reported that the criteria for authorizing an encroachment provides that the encroachment will not interfere with the flow of drainage, that there is adequate room

preserved along streets, and the encroachment may not eliminate the need for parking, vehicle maneuvering, or pedestrian travel. He stated that it is staff's opinion that these criteria have been met. He noted that the primary concerns raised by neighboring property owners largely pertain to the geological instability of the bluff with concern that construction activity may cause earth movement or slope failure that would impact their properties. He added that an engineering geologist report was done on behalf of this project, and that the applicant's plans to relocate the home comply with the city standards for construction within geological hazard areas.

Nebel reported that the primary motive in granting the easement was that this property owner truly does have a hardship that has been caused by the continual erosion of the bluff with the edge of the bluff now being very near the footings of this home. He stated that it is his opinion that the issuance of the encroachment permit is compliant with the standards and conditions outlined in 9.15.050 of the Newport Municipal Code.

Roumagoux called for public comment.

Freda Vars reported that the property in has been a subject of contention for a number of years. She stated that no one ever paid attention to ground water in terms of keeping it away from the cliff. She noted that in 2004, it became a rental house. She added that at the time it was sold, the owner was told that he needed to move the house to 56th Street. She stated that the easement is a shared driveway. She added that in 2007, it was questioned as to whether the house could be moved. She stated that in 2012, Schlicker was hired to make foundation and drainage recommendations, and that even in this report, there are many considerations to items included in the foundation. She added that she is not sure the owner/contractor will even follow the recommendations.

Richard Zhao, owner of 556 56th Street, stated that the Schlicker report did not mention the stability of the soil.

Judy Spencer reported that she lives next door to the property. She stated that the property was moved back in the 80's. She distributed maps, and stated that the black line shows how she is supposed to get into her property. She added that she never received notice of the encroachment until Mrs. Vars called about a week before the April meeting. She added that she has owned the property since 2010, and there is no reason why she would not have received notice. She suggested the property owners be required to have a \$3,000,000 bond in case anything falls off the cliff. She reported that the police were called two weeks ago because the doors to the subject property were open; there was trash lying around; and her understanding is that there was drug paraphernalia inside. She added that the property has not been looked after safely.

Robert Rook, contractor for owner, reported that when he applied for a permit to move the house, the city required paperwork for contacting the neighbors. He said that notification was done and there were no complaints, so he moved forward with a geotechnical report to determine whether the ground was stable enough to move the house. He stated that the city performed a plan check and issued a permit which he had for two months. He noted that when he called for a utility locate, the city realized that it had missed the sewer and an encroachment permit was needed. He stated that the neighbors were contacted again. He reported that if the house is not moved, it will have to be condemned as it will be within 24 inches of the bluff. He reiterated that he has a permit to move the house, but needs an encroachment for the sewer.

Bruce Nelson read Ben Piper's letter in support of the encroachment permit.

Mary Crane stated that she never received any notice from the city. She reported that the house is occupied by homeless people who have broken in and are damaging the house. She added that the house will likely fall apart when the move starts.

Steven Mustola reported that he bought the property at 540 NW 56th Street at the end of September, and that the paperwork was not properly filed, and he did not receive notice. He stated that he is concerned that when the move begins, it will cause shaking of the entire area. He asked for assurance that the contractor has protections for damages to other property.

Bob Ward stated that he is not against the plan, but reported that he did not receive notice of the hearings.

Brian Spencer reported that his property is next door. He stated that he is concerned with crossing other properties to park in front of the subject property. He also expressed concern that the digging and moving of the house will cause additional problems. He added that he did not receive notice of the hearing.

Freda Vars reported that she never got notification of the approved permit.

Roumagoux closed the public hearing at 6:45 P.M. for Council deliberation.

Goebel asked whether public notice is required to move a structure, and Tokos stated that it is not required for a building permit, but that there would have been notice of a geologic permit. Goebel asked what kind of easements people have to enter and exit these homes, and Tokos reported that access is through the property to the south.

Allen asked about notice. Tokos reported that the notification lists consist of what is current on the assessment records at the time. Allen asked whether, if there was a deficiency in the notice, the deficiency would have been cured by people getting notice in other ways. Rich stated that actual knowledge would probably cure the deficiency. He noted that staff would customarily use the assessor's records. Allen asked whether there is a legal requirement to check records other than the assessor's records. Rich reiterated the fact that the notice issues would be alleviated even though someone received notice other than the city's official notice.

Saelens noted that property owners should know the status of easements.

Engler asked whether there are ordinances that ensure that properties drain properly. Tokos reported that the Building Official will perform a limited inspection on the relocated property. He reiterated that the appeal is related to the encroachment.

Goebel noted that the easement issue is concerning. Bob Ward stated that he has two easements, and the fact that easements cannot be seen does not mean they do not exist.

Sawyer asked whether insurance can be required for long-term geological damage if the house is moved.

MOTION was made by Swanson, seconded by Saelens, to affirm the decision, dated March 20, 2017, approving the application for an encroachment permit submitted by Robert Rook on behalf of property owner, Johnson Holding Company, Inc. The motion carried unanimously in a voice vote.

Public Hearing and Possible Adoption of Ordinance No. 2112 - Vending on Public Property. Hawker introduced the agenda item. Nebel reported that at the April 17, 2017, Council meeting, Dennis Bishop asked Council to consider making some changes to Chapter 4.10 of the Newport Municipal Code. He stated that this chapter of the code regulates vending on public property, and prohibits vending carts in excess of five feet in length and five feet in height which effectively restricts vending to push carts, since most

hitch vending carts cannot satisfy the size limitations. He added that the ordinance adjusts another issue as it relates to mobile stands. He noted that the proposed ordinance would extend the time a mobile cart can vend in an area from 15 minutes to 30 minutes.

Nebel reported that in addition to Bishop's request to use two of the three spaces in Nye Beach, the city has also received a request from Rebecca Lutz, from Nye Beach Sweets, to utilize one space during the dates of August 18-21, 2017 which coincides with the solar eclipse. He added that with three available spaces, both uses can be accommodated.

Nebel reported that the packet contains a letter from Linda Neigebauer requesting that the Nye Beach Merchants Association be engaged in any changes to the standards for vending on public property.

Nebel reported that because the season is here, and an ordinance does not take effect until 30 days after adoption, Council may want to consider including an emergency clause allowing the ordinance to become effectively immediately on passage.

Nebel reported that there are two additional agenda items that call for the adoption of resolutions related to vending on public property. He stated that Resolution No. 3776 will need to be considered if Council adopts Ordinance No. 2112. He added that Resolution No. 3777 establishes locations for vending on public property. He stated that this resolution eliminates the Naterlin East parking lot as vending site. He noted that Resolution No. 3777 should be enacted whether or not Council approves Ordinance No. 2112.

Engler asked whether this ordinance had been vetted by the Planning Commission. Nebel noted that this is not a zoning issue. Engler stated that the ordinance needs a lot more review, and that the size of the cart should be site specific.

Roumagoux opened the public hearing on Ordinance No. 2112 at 7:06 P.M. She called for public comment.

Rebecca Lutz, owner of Nye Beach Sweets, reported that she has owned her business in Nye Beach for almost four years. She noted that she has applied for one of the five-foot table spaces currently allowed in the Nye Beach Turnaround. She noted that the space is a bit too small, but that she is not in favor of allowing any kind of vending trailer in the Turnaround. She added that since a number of people use the Turnaround for ocean viewing and beach access, she does think that a large cart is acceptable in that neighborhood. She stated that her business profitability, and that of other permanent businesses, will be affected by this type of use.

Linda Neigebauer, owner of Nye Cottage Beads, reported that a maximum vending fee of \$250 annually is extremely reasonable compared to what permanent local businesses pay. She stated that she is also concerned about the size of the vending structure proposed to be located at the Turnaround. She added that a 10 foot by 10-foot market canopy is typical. She stated that 16 feet of kitchen would be competition, and added that permanent businesses support staff every day. She noted that there could be potential damage to the vending site itself. She stated that she hopes the vending stand size will not change and fees will not be reduced.

Dennis Bishop reported that his trailer is ten feet long and weighs 1,600 pounds. He reported that he has invested time, money and resources to clean the vending area.

Having no additional comment, Roumagoux closed the public hearing for Council deliberation at 7:15 P.M.

Allen stated that he would prefer to get feedback regarding issues of concern expressed this evening, and not rushing into adopting something that may need to be revisited soon. He added that it is also his preference to send this ordinance to the Planning Commission for a hearing before action.

Engler reported that she had not seen the map with the designated vending areas. She asked about time limits on vending carts related to how long they can be left at a particular location. Nebel stated that it is anticipated that carts will be removed at the end of each day. Tokos noted that there are time limits in the existing ordinance. Engler asked about the distinction between a fixed stand versus a mobile stand. She asked whether the length of Bishop's cart includes the tongue of the cart, and Tokos reported that it does include the tongue.

Saelens noted that serious consideration needs to be given to whether the Planning Commission should review this ordinance.

Swanson stated that she does not believe that a Planning Commission review is necessary. She asked why Bishop was told that he could be a part of Loyalty Days and then denied that opportunity. She asked whether the third space, at Nye Beach, is a vending space or devoted to picnic tables. Tokos confirmed that there is room to accommodate the tables and the third vending space.

Sawyer stated that moving forward with the adoption of this ordinance is the way to go on this issue.

Engler asked whether there is a way to accommodate Bishop in a temporary way. Nebel noted that the ordinance could be adopted with a sunset clause which would force a review after the ordinance sunsets.

Goebel suggested a temporary permit for the summer, and reviewing the ordinance at a later date.

Allen noted that if the ordinance included a sunset, it would require another review by Council.

A discussion ensued regarding the number of vending spaces at the Nye Beach Turnaround. Nebel reported that Bishop has applied for a business license and submitted payment for the rent of the south and center spaces. He noted that he also received request for other space from Rebecca Lutz for the weekend of the solar eclipse.

Council was in agreement to amend the ordinance by renumbering the sections so that Section 2. will become Section 3., and that a new Section 2. be added that includes a sunset clause requiring that this ordinance be revisited at the first regular Council meeting in 2018. The new Section 3. will include an emergency clause so that the ordinance becomes effective immediately upon passage.

MOTION was made by Allen, seconded by Saelens, to read Ordinance No. 2112, an ordinance pertaining to vending on public property, by title only, and including the amendments to the ordinance made this evening, and place for final passage. The motion carried unanimously in a voice vote. Hawker read the title of Ordinance No. 2112 and the amendments made to the ordinance at this evening's meeting. Voting aye on the adoption of Ordinance No. 2112 were Allen, Engler, Goebel, Roumagoux, Swanson, Saelens, and Sawyer.

Council agreed to take a brief break and hear from the representatives from the hospital prior to returning to public hearings.

COMMUNICATIONS

From Drs. David Bigelow and Lesley Ogden - Update on the New Hospital Project.

Hawker introduced the agenda item. Nebel reported that Drs. Bigelow and Ogden are here this evening to present an update on the new hospital project. He added that Dr. Bigelow will be retiring soon, and Dr. Ogden has been named the CEO of both the Newport and Lincoln City hospitals.

Bigelow and Ogden made a PowerPoint presentation regarding the new hospital project. It included: guiding principles (patient-centered; flexible; safe; local/welcoming/intuitive; healing environment; team-based; technologically appropriate; efficient and transparent); and the construction timeline for all three phases, including phase one which is the new building, phase two which is the renovation of the 1988 building, and phase three, demolition of the original hospital. An invitation to the May 23 groundbreaking was extended to Council.

PUBLIC HEARINGS

Adoption of Resolution No. 3776 Establishing Fees for Vending on Public Property.

Hawker introduced the agenda item. Nebel reported that since Council adopted Ordinance No. 2112, it is necessary to adopt a resolution establishing fees for vending on public property. He stated that this will allow the fees to be reviewed on an annual basis. He added that the proposed fees are identical to what is in the city code.

Roumagoux opened the public hearing on Resolution No. 3776 at 8:22 P.M. She called for public comment.

Linda Neigebauer reported that Nye Beach residents were never advised that there was a hearing about this ordinance. She stated that the fee structure is really low, and suggested that everyone vending at Nye Beach should have to pay rent. She asked whether it is possible to create another vending location near the pump station by the Agate Beach Best Western.

Angie Bishop reported that there were three spaces in the past, but that currently there are only two due to the location of picnic tables. She requested permission to rent the entire area with the cement tables at the north end, or not allow use of the space with the picnic tables. She noted that the area needs to be well-defined.

Dennis Bishop reported that he has spent several thousand dollars in maintenance of the area.

Roumagoux closed the public hearing for Council deliberation at 8:33 P.M.

MOTION was made by Saelens, seconded by Sawyer, to adopt Resolution No. 3776 establishing fees for vending on public property. The motion carried unanimously in a voice vote.

Public Hearing on Resolution No. 3774 Providing a Supplemental Budget and Making Appropriations/Total Requirement Changes for Fiscal Year 2016/2017.

Hawker introduced the agenda item. Nebel reported that there are a number of adjustments required in the appropriations for the current fiscal year. He stated that the first adjustments reflect revenue from the sale of the seafood processing facility in the amount of \$1,652,857.50, with \$1,325,000 being transferred to the General Debt Fund to pay off the Angle Street property in the amount of \$1,123,071.00, with \$203,613 being used to pay off the debt related to the Northside Fire Hall, and the balance of \$329,000 being

transferred into the Reserve Fund of a new cost center that will be created to fund future land purchases. He added that this is consistent with Council direction provided at the May 1, 2017 meeting and formalized with this resolution.

Nebel reported that the second area for adjusting appropriations relates to the 70th Street land acquisition. He stated that even though the funds from the FEMA grant to purchase the homes were not routed through the city, the city must recognize the grant expenditures as part of its appropriations. He added that the adjustment recognizes receipt of the \$1,100,000 grant, and the related land purchase associated with the grant.

Nebel reported that the final adjustment is from the General Fund Contingency for the construction of the new parking lot on Angle Street, in the amount of \$177,000. He stated that it was hoped that pool contingencies would cover a portion of this, but with the project winding down, and the fiscal year coming to a close, it is necessary to take action at this time.

Nebel reported that in the SDC Fund, there was an appropriation for a traffic signal to be installed at Abbey Street and Highway 101 in conjunction with the hospital project. He stated that the traffic analysis associated with the hospital project did not justify installation of a traffic signal, and \$137,467 will be returned into the SDC Fund Contingency. He added that \$50,000 is proposed to be moved from the SDC Fund Contingency for land acquisition for NE 6th Street.

Nebel reported that the Capital Project Fund requires the transfer of \$243,900 from the South Beach Urban Renewal District for the Chestnut Street Trail, in the amount of \$50,000, and right-of-way acquisition pertaining to Highway 101 and the 62nd Street projects in the amount of \$193,000.

Roumagoux opened the public hearing at 8:39 P.M. She called for public comment. There was none. She closed the public hearing for Council deliberation at 8:40 P.M.

Allen referred to the \$177,000 expenditure for the parking lot at Highway 101 and Angle Street, and asked whether this was previously discussed. He stated that he thought the cost for improvements would come from funding for the Aquatic Center. He noted that Council is finding out tonight that funding is coming from the General Fund Contingency. He stated that he will vote against this resolution due to this reason. Nebel noted that staff is in the process of closing out the pool project, and one of the things that needs to be done is to identify appropriations for this year which is why the funding is designated to come from the General Fund Contingency. Murzynsky reported that after this adjustment, the General Fund Contingency will contain \$571,000, and that funds from land sales will still go into the reserve fund.

MOTION was made by Engler, seconded by Sawyer, to adopt Resolution No. 3774, with Attachment A, a resolution adopting a Supplemental Budget for Fiscal Year 2016/2017, and making appropriation increases and changes for the current fiscal year. Allen reported that he is voting no because he has concerns with General Fund monies being used for the parking lot improvements. The motion carried in a voice vote with Allen voting no.

COMMUNICATIONS

From Councilor Goebel Regarding the Deconstruction Industry. Goebel suggested that due to the late hour, this item be rescheduled to the next meeting. Council concurred.

CITY MANAGER'S REPORT

Authorization of an Amendment to the City Contract with the Oregon Emergency Management for the Closeout of the Safe Haven Hill Tsunami Evacuation Assembly Area Project. Hawker introduced the agenda item. Nebel reported that Tokos has worked with the Oregon Office of Emergency Management to finalize the closeout of the Safe Haven Hazard Mitigation grant. He stated that once this amendment is approved, FEMA will authorize the final two reimbursement requests submitted by the city. He added that this final amendment increases the total cost of the project to \$928,870 with a 75% federal share of \$680,478, which is an increase in federal funds of over \$200,000. He noted that this was primarily to address ODOT issues related to retaining wall construction in the Highway 101 right-of-way

MOTION was made by Sawyer, seconded by Saelens, that Amendment No. 2 to the Hazard Mitigation Grant Program Contract DR-1964, FEMA Project No. DR-1964.0005 between the State of Oregon and the City of Newport be approved by the City Council and authorize the City Manager to sign the contract as presented. The motion carried unanimously in a voice vote.

Approval of Mutual Aid Agreement with ORWARN. Hawker introduced the agenda item. Nebel reported that the Oregon Water/Wastewater Agency Response Network is a consortium of local governments that provides mutual aid in disasters. He stated that there is no cost in joining ORWARN, and never an obligation for cities to provide services to other cities. He added that ORWARN develops a listing of mutual assistance resources, and creates a network for cities to indicate their needs, as well as have resources to assist communities that are looking for mutual assistance. He noted that ORWARN is another good tool for our resiliency planning.

MOTION was made by Engler, seconded by Goebel, to approve a Mutual Aid Agreement with the Oregon Water/Wastewater Agency Response Network, and authorize the City Manager to execute an agreement on behalf of the City of Newport. The motion carried unanimously in a voice vote.

Adoption of Resolution No. 3777 Establishing Business Vending Areas on Public Property. Hawker introduced the agenda item. Nebel reported that Chapter 4.10 of the Newport Municipal Code creates standards by which vending may occur along public streets and sidewalks and other public spaces. He stated that the current locations were established more than 30 years ago by Resolution No. 2680, with locations at the Nye Beach Turnaround, the Hatfield Drive pump station property, and City Hall (Naterlin east parking lot). He noted that this resolution removes the Naterlin east parking lot. He added that this resolution is not tied to the adoption of Ordinance No. 2112, and should be considered regardless of the adoption of Ordinance No. 2112.

Goebel reported that he likes the idea of including a vending space near the Agate Beach pump station.

Engler reported that she would like Council to hold a work session on this issue.

Allen asked whether consideration of this resolution could be deferred, and Tokos noted that this is a housekeeping item.

MOTION was made by Allen, seconded by Swanson, to defer discussion on this issue to a future Council work session. The motion carried unanimously in a voice vote.

Authorization to Make an Offer to Purchase Real Estate for the Schooner Creek and 48th Street Sanitary Sewer Pump Stations. Hawker introduced the agenda item. Nebel reported that the city has entered into an agreement with DEQ that requires certain upgrades be made to the sanitary sewer system to reduce overflows during rain events. He stated that the Big Creek Pump Station has been operational and will be completed in the next few weeks to address overflows into Big Creek. He added that the same type projects need to occur at the Schooner Creek Pump Station as well as the 48th Street Pump Station. He noted that these projects are currently in the early stages of design with the anticipation of bidding during the winter of 2017/2018 for the pump stations and associated force mains. He stated that the existing Schooner Creek Pump Station is located in the right-of-way of NW 68th Street, and there is insufficient space to construct a new pump station at the same location, and it is desirable to move the pump station away from the oceanfront due to long-term stability issues. He added that there are limited locations that can accommodate lift stations since the sewage must flow by gravity from surrounding properties into the lift stations which requires the lift stations to be at an elevation where they can collect existing flows. He stated that two locations were identified for the pump station with the best location on Highway 101 south of the Agate Beach Market. He added that staff has had preliminary discussions with both property owners, and they are willing to accommodate the city's needs. He noted that appraisals were performed to determine value. He stated that staff is requesting Council authorization to make an offer to the property owners to purchase this property.

Nebel reported that the Schooner Creek Pump Station would be located on property owned by Alta Vista Land, LLC. He stated that the purchase price for approximately 0.29 acres is \$29,100. He added that the 48th Street Pump Station is currently located in the Highway 101 right-of-way immediately adjacent to a residence. He noted that when there are pump problems, the city received regular complaints from the adjacent property owners about noise and odors. He added that this site that will accommodate this best can be obtained by the purchase of two adjoining lots comprising approximately 0.34 acres. He stated that this property is commercial property on Highway 101 which drives the cost up substantially. He added that the appraised value of this property was \$148,000. He noted that the preliminary cost for these two lift stations is estimated at \$3.5 million.

Gross and Nebel responded to Council questions.

MOTION was made by Allen, seconded by Engler, to authorize the preparation and delivery of an offer to purchase real estate from Alta Vista Land, LLC in the amount of \$29,100, and from the Clifford Family Trust in the amount of \$148,000 for the new locations for the Schooner Creek and 48th Street sanitary sewer pump stations. The motion carried unanimously in a voice vote.

Report on Property Complaints on Cherokee Lane. Hawker introduced the agenda item. Nebel reported that at the January 3, 2017 Council meeting, Dennis Bishop approached Council and expressed concerns about two property issues on Cherokee Lane. He stated that one concern was the operation of a vacation rental at 3914 NW Cherokee Lane, owned by Linda Neigebauer, and the other concern was related to property owned by Patrick Larson, at 3900 NW Cherokee Lane, regarding a business being run out of this property.

Nebel reported that Bishop also indicated that the ambulance has not been able to reach him in emergency situations; Thompson's Sanitary Service cannot get trucks down to pick up garbage; firetrucks cannot turn around in the cul-de-sac; vehicles block his access so that he cannot get out of his home; 3914 NW Cherokee has an illegal fence; 3900 NW Cherokee has an encroachment into another neighbor's property for an illegal sunroom; garbage cans are left out for extended periods of time; and work was being performed without a building permit. He stated that the city also received a complaint from Rose Jade expressing concern over parking limitations, and required parking that is not in place for a vacation rental. He noted that she also indicated that in 1997, there were similar complaints that came from the residents in the area regarding the operation of this house. He added that he has talked with other property owners on the street to understand some of the history of the site, and they requested confidentiality.

Nebel reported that the properties in and around Cherokee Lane were annexed into the city in 1978. He stated that Cherokee Lane is a thirty-foot right-of-way with approximately 16 feet of paved road, which meanders slightly west of the center of the right-of-way. He added that at the south end of Cherokee Lane, the right-of-way widens out into a substandard cul-de-sac. He noted that over the years on the south end of the street, property owners have paved portions of the right-of-way and private property. He stated that this means there is no distinction between where the public right-of-way begins, and the private property begins. He noted that in a typical, developed neighborhood where curbs, sidewalks, and driveway aprons are defined, it would be clear where the driveway ended and the private property began, but to the casual observer, it is impossible to tell what is street, and what is private property on NW Cherokee Lane. He added that the houses that were built prior to annexation have very limited setbacks from the right-of-way, particularly on the west side of the street.

Nebel reported that there are also two new homes that have been constructed in the last couple of years on the street. He stated that one is a former outbuilding that has been converted into a home by Bishop, and the second is at the end of the cul-de-sac where a new home has been constructed. He added that previously these lots provided some overflow for parking and maneuvering on the street.

Nebel reported that 3914 NW Cherokee Lane is owned by Linda Neigebauer who uses the property as her residence and also has a business license to operate a vacation rental at this location. He stated that this home was initially built in 1963, and annexed into the city in 1978. He noted that in 1985, an addition was built over the one story garage which did not change the overall footprint of the home. He added that a requested addition setting the house closer to Cherokee Lane was not permitted at that time, and was not built. He stated that Neigebauer has operated a vacation rental from this location for many years. He noted that in 2012, she obtained a new business license based on the city's new vacation rental policies. He added that in 2012, she was licensed to have up to eight guests requiring three off-street parking spaces. He noted that in mid-July 2016, Neigebauer indicated that she began to rent her vacation rental to no more than four guests, which requires one parking space. He stated that she explained that she made this decision because additional development along the street has reduced available parking.

Nebel reported that the basis for determining off-street parking spaces used by the Community Development Department are that those spaces do not interfere with the travel lanes of the road. He stated that this is the standard that has been used for many

older neighborhoods developed prior to modern setbacks, and was the basis for determining that adequate parking existed at this address.

Nebel reported that the city does not impose any type of penalty when work requiring a permit is done without a permit. He stated that this may be a policy issue Council wants to consider in the future.

Nebel reported that in late 2016, Neigebauer was making modifications to the laundry room in her house to accommodate her mobility issues. He stated that this work was initiated without a building permit, but when Neigebauer was contacted by the city's Building Official, Joseph Lease, she applied for a structural permit for these improvements. He added that plumbing and electrical permits were obtained on December 28 and 29, 2016. He noted that Bishop indicated that work was continuing, and County Inspector, Al Eames, visited the site to determine what work was occurring. He stated that Eames reported that work that had been ordered stopped was not going on at the time of his inspection. He added that Neigebauer is continuing her work on the laundry room in accordance with the building inspection process, and is close to arranging for a final inspection.

Nebel reported that Bishop also asked about zoning standards for single family (R-1) Districts. He stated that vacation rentals and bed and breakfast uses are permitted in R-1 Districts. He noted that the Community Development Department does not delve into how a dwelling is occupied, and if someone wants to rent rooms in a house to different people that is their prerogative. He stated that the presence of a second kitchen is what typically creates an additional dwelling unit, but the SDC's paid when the unit was connected to the sewer in 1978 suggest that there is only one kitchen.

Nebel reported that on further review of this property, the Lincoln County Residential Appraisal Data Sheet for 3914 NW Cherokee Lane shows this unit as a duplex. He stated that it appears that the 1985 remodel created "mother-in-law" apartment that was complete with kitchen. He noted that the city has not required, nor has had a practice of keeping the detailed plans for residential structures. He added that the only information the city has is that a permit was issued and presumably the project was inspected by the city. He stated that following the 1978 annexation relating to the connection to the sewer system, this home was assessed based on one kitchen and one bathroom. He added that if this second kitchen was added after annexation into the city, it would not be compliant with R-1 zoning for this district. He noted that Neigebauer recently brought in what appears to be a complete set of the 1985 plans which suggest that a second kitchen existed prior to the remodel, but it is unclear whether the second kitchen was constructed prior to annexation.

Nebel reported that staff has had discussions with the property owner about the removal of a fence that exceeds the height limitation. He stated that the business license for the vacation rental has been changed to allow for up to four guests, and two vehicles including the owner's vehicle. He added that in early January, the website for Cherokee House/Apartment Plus at Agate Beach indicates a maximum of eight occupants and four vehicles can be accommodated at this location. He stated that the website should be cleaned up to reflect the maximum of four guests and two vehicles.

Nebel reported that an inspection occurred on the initial complaint to the Building Department. He stated that work was stopped, and building permits were acquired, by the property owner, for the work that was being performed.

Nebel reported that a violation letter has been sent to Neigebauer indicating that she was advertising more spaces than she could accommodate at her vacation rental on Cherokee Lane. He noted that this has been corrected.

Nebel reported that the Community Development Department will be issuing a notice that the duplex is not compliant with zoning, and can only be used as a single family home, unless Neigebauer can establish that the second kitchen existed prior to annexation. He stated that because the improvements were made 32 years ago, presumably under review of the city's Building Department, it is the Community Development Department's opinion that requiring physical changes to this property at this time is not advised. He added that by notifying the property owner of this determination, this will need to be disclosed if the property changes hands.

Nebel reported that the property owner has indicated that the six-foot fence will be removed.

Nebel reported that the next issue concerns the property at 3900 NW Cherokee Lane. He stated that Bishop has reported that this property is owned by Patrick Larson and has an unlicensed home-based business, Heirloom Productions, that has at least one employee operating out of the home. He noted that this issue is being referred to the Community Service Officer for review. He stated that while home occupations are permissible, they cannot involve employees coming to the site.

Nebel reported that Bishop indicated there was an addition built on the 3900 NW Cherokee Lane property that was unpermitted, and appears to encroach on neighboring property. He stated that in reviewing historic aerial photos, it appears the addition has been in place for a number of years; however, was not part of any permitted activity.

Nebel reported that in reviewing this issue, one-story structures, not exceeding 12 feet in height, with enclosed walls shall be permitted provided the open area of the longer wall and one additional wall is equal to at least 65% of the area leaving a minimum of 6 feet 8 inches for each wall, and that the sunroom utilizes an existing door into the main structure. He stated that the property owner has the responsibility to maintain required setbacks. He added that since the sunroom does not border Bishop's property, and no complaints have been received from the neighboring property owner, no action is being pursued at this time.

Nebel reported that Bishop indicated he provided surveys of this property. He stated that the aerial imagery provided by Bishop is not a survey. He noted that the record of survey shows only lot lines, not buildings. He added that the building plans are also not a boundary survey, but a representation of where neighboring buildings are thought to be. He noted that staff has not been provided with a survey identifying the specific location of structures to the property lines.

Nebel reported that Larson was contacted by the city, and applied for a business license to operate a business out of his home. He stated that Larson was informed that under the home-based businesses provisions, employees working out of the home are not permitted.

Nebel reported that there are parking issues that impact ingress and egress to properties on Cherokee Lane. He stated that the street is substandard particularly for the number of homes located on both sides of a narrow street where homes were built with minimum setbacks since the 1960's. He added that the parking issue has been complicated by the construction of two new homes on an undersized cul-de-sac. He noted that while these two new houses meet the minimum setbacks, the loss of open space has

made this neighborhood more compact. He stated that property owners have paved and use the right-of-way, and private property without any clear lines of where the right-of-way begins and private property ends.

Nebel reported that this has been a difficult issue to sort through since building issues relate back 32 years. He stated that there has been a fair amount of misinformation related to neighborhood complaints. He noted that the ambulance company has never, and would never, not respond to an emergency call. He added that they have reported that there have been no unusual calls to Cherokee Lane. He stated that Thompson's Sanitary Service does not have any unusual problems in serving Cherokee Lane. He added that the Fire Department brought in a rig to see if they would have any challenges in turning around on Cherokee Lane, and they did not, although circumstances could change depending on where vehicles are parked.

Nebel reported that Bishop also make a complaint about Victor Mettle, and Tokos' response is included in the packet.

Nebel stated that unless Council feels otherwise, he intends to submit a questionnaire to all property owners on Cherokee Lane to see if there are any thoughts on better managing parking in the right-of-way, or to see if there is any support for a small LID project to create additional parking in the existing right-of-way. He stated that in his discussions with various neighbors, there is some hesitancy to get involved in these divisive discussions, and that he has received a cool reception to holding a neighborhood meeting. He noted that it may be possible to get better information in a structured format through a neighborhood survey.

Nebel suggested Council consider the following issues: (1) Penalty provisions for work requiring a permit, that has been initiated by without a permit; (2) Consider placing some pavement markings on the cul-de-sac to avoid some of the parking conflicts that have been reported; (3) Determine whether property owners wish to proceed with an LID project to widen the street; (4) Suggest that Bishop or Larson consider placing a legal fence along their common property line to create a demarcation line that would be more enforceable when complaints come in regarding parking; and (5) Require that all off-street parking for vacation rentals be located on private property, not just outside of the curb and sidewalk lines.

Neigebauer distributed a handout showing the 1971 building permit for her mother-in-law apartment.

Bishop reported that the neighborhood is upset, and that the issues he has brought to the city's attention remain unresolved.

Roumagoux complimented staff on the time spent working on these issues. She stated that she thinks suggestion of survey/questionnaire would be the next step in resolving the issues. Allen agreed that the survey might allow candor.

Angie Bishop asked for the definition of R-1 zoning. Tokos reported that Neigebauer submitted information related to two dwelling units with a shared access. He noted that she has a non-conforming home with two dwelling units in an R-1 zone. He added that the structure was constructed at a time when it was lawful to do so. He stated that it does not conform to current rules, but is grandfathered in due to its date of construction.

Goebel suggested that an LID might be something to approach the residents with. He stated that if the neighborhood does not want to solve the issues, the city cannot solve them.

Update on Plans for the Upcoming Solar Eclipse. Council agreed, due to the late hour, to defer this item to the next regular meeting.

Upcoming Open House on New Flood Insurance Rate Maps. Hawker introduced the agenda item. Nebel reported that an open house on the new flood insurance rate maps will be held on May 18.

LOCAL CONTRACT REVIEW BOARD

The City Council, acting as the Local Contract Review Board, began its meeting at 9:27 P.M.

Approval of Change Order No. 2 with J.W. Fowler Company for the Big Creek Pump Station Project. Hawker introduced the agenda item. Nebel reported that final work is being completed to close out the Big Creek Pump Station project. He stated that the original contract price was \$2,618,037.00, and with approval of the second change order, the project total will be \$2,859,374.36. He noted that there were a number of changes that occurred on the project, including: stopping leaks from various pipe penetrations; a modification to the building to lower its profile to address concerns expressed by the Agate Beach Best Western; a number of modifications to the pump station that were required for bypass pumping; relocation of existing fiber optic lines; and other similar things.

MOTION was made by Engler, seconded by Goebel, to approve Change Order No. 2, in the amount of \$235,008.31, with James W. Fowler Company for the Big Creek Pump Station Project. The motion carried unanimously in a voice vote.

Approval of Contract Amendment No. 1 with GSI Water Solutions for the Mid-Coast Place Based Planning Study, Planning Step 2: Characterize Water Resources. Hawker introduced the agenda item. Nebel reported that the city has been the recipient of funds from the Oregon Water Resources Department for place based planning in the Mid-Coast Region. He stated that the first phase of the project to build a collaborative and inclusive process has been completed, and the next phase will be to understand current water resources, and identify knowledge and data gaps as part of this process. He noted that the consultant retained for this project has submitted a proposal for Phase 2 in the amount of \$63,600.

MOTION was made by Engler, seconded by Allen, to approve Amendment No. 1 with GSI Water Solutions in the amount \$63,600 for the Mid-Coast Place Based Planning Study, Planning Step 2: characterized Water Resources. The motion carried unanimously in a voice vote.

RETURN TO CITY COUNCIL MEETING

Having no further business, the Local Contract Review Board completed its business, and Council returned to its regular meeting at 9:36 P.M.

REPORT FROM MAYOR AND COUNCIL

Due to the late hour, Council opted to forego reports.

Engler requested an excuse from the June 5, 2017 meeting as she will be attending a training in Bend. MOTION was made by Allen, seconded by Saelens, to excuse Engler from the June 5, 2017 Council meeting. The motion carried unanimously in a voice vote.

PUBLIC COMMENT

Dennis Bishop requested permission to retain and pay for a licensed contractor to repair the electrical service at the Nye Beach Turnaround. Gross reported that a right-of-way permit would be required, and that the document is on the city website. He asked that Bishop complete the document and return it to City Hall.

ADJOURNMENT

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

Margaret M. Hawker, City Recorder

Sandra N. Roumagoux, Mayor