

November 1, 2010  
6:00 P.M.  
Newport, Oregon

The City Council of the City of Newport met on the above date in the Council Chambers of the Newport City Hall. On roll call, Bain, McConnell, Bertuleit, Patrick, Brusselback, Kilbride, and Obtshka were present.

Staff present was City Manager Voetberg, City Recorder Hawker, City Attorney McCarthy, Community Development Director Tokos, Finance Director Marshall, Public Works Director Ritzman, Library Director Smith, Parks and Recreation Director Protiva, and Police Chief Miranda.

### **PUBLIC COMMENT**

Bain explained the public comment procedure.

Bain reported that folks interested in speaking on the trash hauling issue may speak after the city attorney's report on this matter.

Mark Fisher reported that the Aquarium had agreed to not ask the city for additional financial support, and he stated that the city should adhere to this agreement.

### **CONSENT CALENDAR**

The consent calendar consisted of the following items:

- A. Approval of City Council minutes from the work session and regular meeting of October 18, 2010.

Hawker reported that there was a change to the minutes. A discussion ensued regarding recommended changes to the minutes that were sent via the contact us form on the website. MOTION was made by McConnell, seconded by Patrick, to approve the consent calendar as amended. The motion carried unanimously in a voice vote.

### **COUNCILOR'S REPORTS AND COMMENTS**

Patrick reported that she attended a Port of Newport meeting, at which the Commissioners received an update on the NOAA and terminal projects, and the South Beach Urban Renewal District and LED lighting. She noted that the Port's project manager gives an update at the beginning of each meeting and responds to questions.

Kilbride reported that he attended the recent sustainability workshop. He added that it was well done, and it is in the city's best interest to follow-up with the program.

Kilbride reported that he had reviewed the airline reports, and ridership and ticket revenues are down. He added that SeaPort's unbilled portion is approaching \$200,000.

McConnell reported on a recent meeting of the Airport Committee. The Committee received an update on the AIP project and inspections, and asked that a volunteer sign-up system be placed on the website.

McConnell reported that the sustainability workshop attracted many representatives from community institutions. He added that there were positive feelings at the conclusion of the workshop.

McConnell reported that he attended an economic development workshop designed to prepare businesses for working with NOAA.

McConnell reported that he had attended the ribbon cutting for Pelican Place.

McConnell reported that he had attended an LOC workshop on economic development. He noted that there was valuable information on available monies and visioning.

Bain noted that the contracting workshop was designed for businesses interested in working with all government agencies.

Brusselback reported that the sustainability workshop was well received, and that it is critical to maintain enthusiasm.

Brusselback congratulated the Public Works Department for its partnership on the new sidewalk on Elizabeth Street.

Brusselback congratulated the Nye Beach Merchants Association on its Halloween extravaganza.

Brusselback requested an excuse from the November 15, 2010 Council meeting. MOTION was made by McConnell, seconded by Patrick, to excuse Brusselback from the November 15, 2010 City Council meeting. The motion carried unanimously in a voice vote.

Obtshka reported that the Library Foundation has a solid financial status. He reported on library activities including: second grade library cards; Newport Reads; statistics; and Literary Flicks.

Obtshka reported that the senior health fair was a successful event.

Obtshka displayed a copy of the Travel Newport Magazine which is published twice annually by the News Times.

Obtshka reported that the Nye Beach Banner Auction will be held at 4:00 P.M., on November 7, at the VAC.

McConnell reported that he helped with the rain garden plantings. He thanked the Surfrider Foundation and the Lincoln County Soil Conservation District.

McConnell reported on the City Center Newport Association Halloween festivities. He noted that Voetberg and his wife distributed candy at city hall.

Bain reported that Tony Molina, and the local Vietnam Veterans, worked with inmates on various projects including the cleaning of Don Davis Park.

Bain thanked the members of the Water Treatment Task Force.

## OFFICER'S REPORTS

**City Manager's Report.** Voetberg reported that staff plans to utilize the remaining Northside URA monies for deferred maintenance on city buildings that were constructed with Northside Urban Renewal funds. Bertuleit suggested that there may be unknown issues as all URA properties were transferred to the city. Obtshka requested a list of projects that were repaired with this money.

Voetberg reported that the packet contains the grant report on the recent half-marathon.

Voetberg reported that the packet includes the Household Hazardous Waste Management Plan adopted by Lincoln County.

Voetberg reported that the packet contains a copy of a letter from Miranda to ODOT requesting a speed limit change on Highway 20.

Voetberg reported that the packet contains an update on public works projects

Voetberg reported that the packet contains the suggestion/concern/complaint update.

Obtreshka asked when the wayfinding signs would be installed, and Voetberg reported that this will occur shortly.

Kilbride stated that the letter from the chief to ODOT is long overdue, as this is the most dangerous intersection in the community.

Bertuleit stated that he appreciated the public works project update, and expressed concern with the status of the Naterlin sidewalk project.

**City Attorney's Report.** McCarthy stated that she had been working with Thompson's Sanitary Service on the contractor debris removal issue. She distributed Thompson's newsletter that contains information regarding the matter. She reported that staff is working on a "doing business in Newport" section for the website.

McCarthy reported that Protiva and Brusselback are a part of the public art committee. She recommended that this group become an official task force of the city, and will present a resolution for consideration at an upcoming meeting.

McCarthy reported that an agreement has been signed for the SW 30<sup>th</sup> Street property, and it is at the title company. She asked how Council would like the easement to be described, and it was agreed to discuss the issue during tonight's Urban Renewal Agency meeting.

McCarthy reported that the plastic bag mitigation issue would be discussed at the December 6 meeting.

McCarthy reported that the agreement between the city and Bill Barton has been signed.

McCarthy reported that the Technical Task Force has been notified and provided with information for its first meeting which should occur after the beginning of the year.

Bernie Stoll, a local general contractor, addressed Council regarding the construction debris issue and Thompson's Sanitary Service. He proposed that a group of city staff, Thompson's, and local contractors meet to discuss this issue. He volunteered to participate.

Paul LaMont, general contractor, addressed Council regarding the construction debris issue and Thompson's Sanitary Service. He reported several problems with the requirement for Thompson's to remove construction debris.

Keith Johnson, general contractor, addressed Council regarding the construction debris issue and Thompson's Sanitary Service. He stated that the ordinance is poorly written; asked that it be changed, and that enforcement be stopped; and citations be dismissed.

John Vale, West Coast Drywall, addressed Council regarding the construction debris issue and Thompson's Sanitary Service. He asked for suspension of the enforcement of the ordinance until it can be further reviewed.

Joe Hayward, local contractor, addressed Council regarding the construction debris issue and Thompson's Sanitary Service. He noted that there are many problems associated with this matter, and recommended that Council address the issue to benefit the city, rather than Thompson's.

Steve Boyd, Maier Roofing Company, addressed Council regarding the construction debris issue and Thompson's Sanitary Service. He suggested amending the ordinance to include waiver provisions.

John Anderson, West Coast Drywall, addressed Council regarding the construction debris issue and Thompson's Sanitary Service. He specifically spoke to the cleanliness of the local dumpsite.

It was noted that the contract with Thompson's expires in 2014. Bertuleit suggested forming a group to develop a revision to bring back to Council. McConnell asked whether the franchise is revisable.

## DISCUSSION ITEMS AND PRESENTATIONS

**Presentation by the Newport Police Department.** Miranda distributed scrapbooks containing memories of Police Department activities over the past few years. He reviewed the history of the department; displayed a PowerPoint presentation; and updated Council on City Council goals related to the Police Department.

**Presentation by the Oregon Coast Aquarium and History Center/Maritime Museum regarding a request for tourism facilities funds.** Mark Collson addressed Council regarding the Oregon Coast Aquarium. He dispelled rumors that arrangements were made between the city and Aquarium to divert money from the transient room tax fund to the Aquarium. He stated that both projects (Oregon Coast Aquarium and History Center/Maritime Museum) would use approximately one-half of the transient room tax monies that were originally to be used for an event center. Collson reported that Lincoln County contributes approximately \$165,000 annually from its transient room tax fund, and this was done by an election. Collson reported that Tony Pope, general manager of Salishan, had written a letter indicating that he could identify 700 room nights annually that are attributable to the Aquarium. He stated that the Aquarium brings approximately 500,000 visitors annually; has a payroll of 2.5 million dollars to the local economy, and serves more than 27,000 children through outreach activities. Collson reviewed the history of the Aquarium, noting that there is no ongoing significant financial support from the city. He stated that the Aquarium wants to have something in place by 2012 that will help drive attendance. He noted the commonalities between the Maritime Museum and Aquarium.

Carrie Lewis, president of the Oregon Coast Aquarium, reported that funding is needed to renovate the pinniped exhibit. She noted that the current limited pinniped viewing area limits visitors and their experiences, and the renovation will offer visitors an interactive experience. She added that visitors stay longer when they are able to get up close to the animals. She reported that the Aquarium plans to market the pinniped renovation extensively to drive increased attendance that will contribute to a more robust local economy. She reported that the cost of renovation is approximately \$750,000, and requested \$375,000 from the city. She expressed confidence that the remainder would be secured.

John Baker stated that he views Newport as a “can do” community, and is trying to make a few other things happen. He noted that this dual request is a natural partnership because both organizations are seeking visitors and trying to enhance the community through celebrating fisheries and the fishing community. On behalf of the Lincoln Country Historical Society, he requested \$200,000 from the city’s event center fund to support improvements to the Pacific Maritime and Heritage Center. He noted that the improvements will allow the Society to renovate the Maritime Center’s main floor and grounds. He added that when the main floor renovation is complete, the site will be capable of hosting community groups, cultural events, programs, workshops, and temporary exhibits.

Bain stated that the requests would be handled through the normal process. He recognized the many supporters attending in support of both organizations. He noted that the issues could be discussed at the upcoming budget and goal setting sessions. Brusselback suggested discussing the matter at the next work session to establish target timeframes.

## PUBLIC HEARINGS

**Public hearing on manufactured dwelling changes.** Bain opened the public hearing at 8:03 P.M. He asked whether there were any conflicts of interest. There were none. Tokos explained that the issue before Council is whether it is in the public interest to amend the Newport Zoning Ordinance and Municipal Code relating to manufactured dwellings and recreational vehicles to resolve discrepancies with state law, consolidate language, eliminate redundant provisions, improve the enforceability of the code, and address land divisions within manufactured dwelling parks. He added that some of the RV provisions should be in the municipal code. He reviewed the proposed changes, and reported that the Planning Commission unanimously recommended adoption of the changes.

A discussion ensued regarding provisions for temporary RV parking, and specifically the parking of RV’s for use during special events or activities and home building, and associated time limits. Tokos reported that the manufactured home criteria are largely driven by statute, and that the criteria were vetted with the manufactured housing industry. A discussion ensued regarding the accessibility of dumpsters in mobile home parks. Tokos reported that Larry Henson and Doug Fitts addressed the Planning Commission, and their concerns were addressed.

Bain called for public comment. There was none.

Bain closed the public hearing for Council deliberation at 8:25 P.M.

Patrick addressed the issue of parking RV’s between the hours of 11:00 P.M. and 5:00 A.M., outside of a manufactured dwelling or RV park. She asked whether someone parking in a private lot during those hours would be subject to a violation, and particularly if this was their main source of transportation. Tokos noted that this meant a vehicle that was parked and occupied, and is intended to ensure that occupied RV’s are in appropriate places. He added that this is an effort to get the ordinance in compliance with state statutes. Bertuleit suggested amending the timeline to accommodate a temporary period of time. Tokos noted that this code does not prohibit a relative visiting on private property. Kilbride noted that this was passed unanimously by the Planning

Commission and the Citizens Advisory Committee, and it meets Henson's criteria for Longview Hills. He recommended moving forward with the ordinance as presented.

MOTION was made by Kilbride, seconded by McConnell, to read Ordinance No. 2008, an ordinance amending sections of the Newport Zoning Ordinance and Municipal Code, relating to manufactured dwellings and recreational vehicles, by title only, and place for final adoption. The motion carried in a voice vote with Bertuleit voting no. Voetberg read the title of Ordinance No. 2008. Voting aye on the adoption of Ordinance No. 2008 were Obteshka, Brusselback, McConnell, Bain, Patrick, and Kilbride. Bertuleit voted no.

### ACTION ITEMS

**Water treatment plant and related matters - contract amendments.** Verena Winter, HDR project engineer for the water treatment plant was in attendance, and Brian Black, project manager for water treatment plant participated via telephone. McCarthy explained that Council had met in a special session on October 28, 2010, for an update on the new water treatment plant. It was noted that a number of conditions arose at the site facilitating changes to the design, resulting in the project being in a different budget category than previously thought. The water master plan did not include some of the components now in the plan. It was reported that HDR has reached the end of its agreement, and to move forward would require a \$417,357 amendment.

Bertuleit addressed Amendment No. 1 to the owner-engineer agreement, noting that the retaining wall is complete. Black noted that the remaining work is ground stabilization. Kilbride addressed Amendment No. 3 to the owner-engineer agreement, and asked who was going to provide services during construction and start-up before this amendment from HDR Engineering. McCarthy stated that 1.9 million dollars was anticipated to be the total cost of HDR's services, but that had changed because unknown conditions required HDR to do other work that used up time and money. This included the relocation of the plant on the site, and design work that was not anticipated. At this time, HDR will need \$320,000 to finish its work on the project. Bertuleit asked why this much additional work is required. Black stated that the size and complexity of the building and treatment processes, and additional chemical systems, require this amount of work. Black stated that HDR had concerns about the master plan concepts, including the reuse of the existing building and the building size, and that there were unforeseen conditions along the way. Bertuleit suggested a ramp for ADA access to the second story, rather than an elevator, and Black reported that the ramp was more expensive than the elevator. McConnell asked why the city needs to pay HDR any additional money on a contract they signed that said they would start and end project. He asked how the city absorbs cost overruns. Bertuleit expressed concern about the 7% fee to Slayden Construction. Black stated that proposals were based on the scope of work, and at the time, the city was asking for a scope of work related to the master plan concept. He noted that this plan had a certain number of drawings associated with completing the work, and at the time the proposal was made, it was planned to carry out the master plan concept. He stated that flaws were found that increased the size of the building and added treatment processes, so the design increased in size and complexity, and that generated additional drawings that were necessary to convey the plan to contractors and complete the design. Bain asked whether this would generally

require a change order to change the scope of work. Black stated that the city was notified some time ago that HDR was running over budget, and the issue was never reconciled at the time. Obteshka asked whether the city could get an exemption from the ADA elevator requirement. Black stated that he had looked into getting an exemption. Winter stated that there is no room for an exemption. Ritzman stated that he was told by building officials the ADA rules apply without regard to who is going to be working in a facility. Black suggested that perhaps HDR could broach this subject again, and if an elevator is not required, there is the potential that it could be deleted. Winter stated that an elevator costs approximately \$40,000-\$50,000. Kilbride asked whether the city would have to pay Pall \$100,000 if the city opts not to go forward with the project. Bain noted that there will likely be termination charges at a number of levels. Brusselback asked whether staff would be preempted from using the information in the peer reviews if Council moves forward with staff recommendations. McCarthy reported that the greatest impact will be to the Slayden contract. She added that it is difficult to include all the possibilities, and does not want one set of possibilities to be preempted by something here. Patrick asked whether there is any reason a decision has to be made tonight, as this is a complex issue, and she is not satisfied with the answers, and does not feel comfortable making a decision tonight. McCarthy stated that it is her understanding that this is a critical time, and Pall is waiting for a notice to proceed from the city. She asked whether Council intends to move ahead with the water treatment plant. She stated that if Council wants to move ahead with the current contractors, the city would want to issue a notice to proceed soon. She added that Slayden is about to wrap up GMP #1, and if the city does not execute GMP #2, the contractor may begin demobilizing and there may be an interruption in the process. She stated that there is not a lot of time left under the existing HDR contract. Bain asked whether Council can indicate that it wants to continue with the water treatment plant, but have an interruption in at least one of the contract areas, but indicate to Pall that the city wants to continue. McCarthy stated that her recommendation is to look at it as a package. She recommended not giving Pall a notice to proceed until the city is ready to proceed with GMP #2. She stated that there are two peer reports, and that there are several good questions in the reports. She stated that one option would be to approve the motions, and direct staff and HDR to follow up on the CH2MHill and Mike Day reports and report back to Council. Obteshka stated that he had researched the bond measure, and that if the plant is not built pursuant to the vote, the city would be violating the promise. He added that if the Agate Beach reservoir is omitted, the residents would be quite upset, as in some cases, this is probably a major reason for voting for the issue. He asked whether the city had any legal liability, and McCarthy reported that she had spoken with bond counsel and was advised that the city is not bound to the language of the measure in terms of being limited to specific amounts on specific items. She noted that the city can spend more legally, and the city does not have to spend the bond proceeds for all of the items. Kilbride stated that the city has to build the water plant, and will have to find additional monies to get the project built. He stated that he has no confidence in the additional \$750,000, and that the city needs to find out what the whole thing is going to cost, and include a better contingency number. He stated that this will put a big dent in the capital projects budget for the next three or four years, but the project is so far along that it can't be stopped.

Patrick agreed with Kilbride but stated that she wants a project manager who will tell Council what is going on, noting that she does not like to be caught off guard.

Obtreshka asked why South Beach URA monies cannot be used. He stated that he has a request into the USDA regarding borrowing some of the grant money destined for the wastewater treatment plant.

Bertuleit encouraged HDR to develop more solutions.

McConnell suggested attaching parameters to the \$320,000 in Amendment #3. Black stated that HDR worked on a simple time and materials budget for the \$320,000, and plan to work closely with the city's project manager to determine what services are needed. McCarthy suggested adding "up to and not to exceed \$320,000." She stated that the second proposed motion refers to contract change order agreement #2.

MOTION was made by Brusselback, seconded by McConnell, to approve Amendments 1, 2, and 3 for a total amount up to and not to exceed \$417,357, to the agreement between the city and HDR Engineering for work on the water treatment plant, and to instruct staff and HDR to follow recommendations of the two peer reviews by CH2MHill and Day to the best of their abilities. The motion carried in a voice vote with Obtreshka, Bertuleit, and Patrick voting no.

MOTION was made by Brusselback, seconded by McConnell, to approve the contract change order agreement #2 for a deduction in the amount of \$197,100 in the agreement between Pall Corporation and the city related to the water treatment plant. The motion carried unanimously in a voice vote.

MOTION was made by Brusselback, seconded by McConnell, to approve GMP #2 in an amount up to and not to exceed \$9.048 million, to the agreement between the Slayden Construction and the city related to the water treatment plant. Bertuleit stated that he hopes that Slayden will still look for savings, as there is no incentive to get to a number less than this. He requested feedback on this number at the next meeting. McConnell asked whether Slayden could be tied to the peer reviews. McCarthy stated that she agrees with incentives, and that staff will begin working with HDR and Slayden to go through the peer review comments and see how much can be reduced before execution of the agreement. Kilbride stated that the GMP #2 base bid higher, and asked what had been removed from 9.677 million dollars to get it down to 9.048 million dollars. Ritzman reported that this is due to the deductive alternates. Kilbride stated that he would like a second opinion on the flocculation tank. The motion carried in a voice vote with Patrick, Obtreshka, and Bertuleit voting no.

MOTION was made by Brusselback, seconded by McConnell, to direct staff, HDR Engineering, Pall Corporation, and Slayden to continue to value engineer to further reduce project costs on the water treatment plant, and to use peer review information from CH2mHill and Day to further this effort. The motion carried unanimously in a voice vote.

It was requested that staff look into the water tank at Agate Beach with the possibility of constructing the tank if funding could be found. MOTION was made by Obtreshka, seconded by Patrick, to construct the Agate Beach reservoir by the fall of 2011. Voetberg reported that it is its own construction project and will be being designed by another engineer, but that it has not been designed or bid. He added that it will be in next year's budget as the number one capital project. Kilbride suggested trying to figure out funding now. Bain noted that Agate Beach residents will benefit from this, but he does not want to strap the city into a position where the water tank has to be constructed immediately. He suggested that it is shortsighted to find funds by cutting projects, and that the only downside is waiting to get the reservoir project completed. Bertuleit

suggested that the motion be amended to direct staff to look for funding up to FY2013 for funding the Agate Beach reservoir. Brusselback stated that he feels it is irresponsible to choose to do a project that is unplanned and unfunded. Marshall stated that funding has been tentatively identified for both of these projects. He added that four capital projects have been identified that could be used in part for the tank, and there are other possibilities. Obtreshka stated that he is willing to accept Bertuleit's modification to the motion. Kilbride noted that if the city gets started soon, money could be saved on construction costs. Obtreshka asked how many companies build these tanks, and Black stated that there are at least two. McConnell asked whether this would impact this year's budget, and Ritzman reported that it would not. The motion carried unanimously in a voice vote.

Patrick asked about the cost of the peer reviews, and Ritzman reported that the CH2MHill cost approximately \$6,500.

**Resolution No. 3527 supporting an ODOT Flexible Funds Grant application to design and construct bicycle and pedestrian improvements along Ocean View Drive, Coast Street, and Elizabeth Street.** Tokos reported that the issue before Council is whether the Community Development Department should prepare and submit an application for an ODOT Flexible Funds Grant to construct bicycle and pedestrian improvements along Oceanview Drive, Coast Street, and Elizabeth Street between Highway 101 and the Yaquina Bay State Park. A discussion ensued regarding the required match, and the structuring of the grant in three phases to provide options. MOTION was made by McConnell, seconded by Brusselback, to adopt Resolution No. 3527, supporting an Oregon Department of Transportation Grant application for bike and pedestrian improvements along Oceanview Drive, Coast Street, and Elizabeth Street. The motion carried unanimously in a voice vote.

## ADJOURNMENT

Having no further business, the meeting adjourned at 10:04 P.M.

---

Margaret M. Hawker, City Recorder

---

William D. Bain, Mayor