

September 7, 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, Kilbride, Bertuleit, Patrick, Brusselback, and Obteshka were present. McConnell was excused

Staff present was City Manager Voetberg, City Recorder Hawker, City Attorney McCarthy, Community Development Director Tokos, Finance Director Marshall, Public Works Director Ritzman, Airport Director Cossey, and Police Chief Miranda.

PROCLAMATIONS AND RECOGNITIONS

Bain proclaimed the month of September 2010 as National Preparedness Month in Newport.

CONSENT CALENDAR

The consent calendar consisted of the following items:

- A. Minutes of August 16, 2010 City Council work session and regular meeting;
- B. OLCC license application from Newport Bay Coffee Company.

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

COUNCILOR REPORTS AND COMMENTS

Kilbride reported that he has learned that municipalities do not have to comply with ERISA rules, but that a determination on future pension plan funding needs to be made.

Kilbride reported that the July room tax is down 4.5%.

Bertuleit reported that he was unable to attend the recent Airport Committee meeting. He added that the city is operating a business at airport and that it is important to make every effort possible to attract businesses.

Bertuleit reported that the Newport half marathon will be held on September 18, and there are still volunteer and participant opportunities.

Patrick reported on a recent meeting of the Port of Newport. She noted that there was an update on the Paisley and Hennebeque, and that the NOAA project is on target.

Obteshka reported that he had flown SeaPort to Portland and back, and that it was a great adventure, and the customer service is superb.

Obteshka noted that a bike rack had been installed at Don Davis Park.

Obteshka asked for an update on the monitoring task force.

Brusselback reported on a recent meeting of the Public Art Committee. He noted that the final draft of the contract will be sent to the city manager and city attorney for review. Voetberg reported that the contract will come to Council in November.

Bain reported that he attended a recent meeting of the Air Service Consortium, and there is nothing new to report since the update to City Council, by Rob McKinney.

Bertuleit reported that the Cessna Caravan came in last night, and that he is flying SeaPort tomorrow.

Kilbride asked for an excuse from the next meeting. MOTION was made by Obtshka, seconded by Brusselback to approve the requested absence. The motion carried unanimously in voice vote.

Bertuleit requested an update on the Naterlin Drive sidewalk project. Ritzman reported that the 50% plans were under review, and that negotiations will need to occur with the Coast Guard for right-of-way. He added that the project will not impact the wetland.

OFFICER'S REPORTS

City Manager's Report. Voetberg reported that he and Bain attended a meeting with other Lincoln County mayors to discuss 911 consolidation. He noted that there is information in the packet, and that no additional meetings have been scheduled.

Voetberg reported that the Surfrider Foundation will pay \$15,000 toward the rain garden project on the south lawn of city hall.

Voetberg reported the packet contained information regarding the city's eligibility for USDA Rural Development grant funding for wastewater system improvements. He noted that he will keep Council informed.

Voetberg reported that the packet contains a Public Works Department project list and status report. He noted that items not on the list are the Elizabeth Street sidewalk and the pre-winter Nye Beach storm drain cleaning.

Voetberg reported that the fuel tax revenues, for November 2009 - June 2010, are included in the packet. He added that no projects are scheduled this year, but next that he will be seeking input on projects for the next budget year.

Voetberg reported that the packet contains correspondence from the Senior Center Advisory Committee regarding rental rates. He noted that the square dancing group has requested a lower fee for use of the facility. Voetberg stated that he would attend the next Senior Center Advisory Committee to obtain additional information. McCarthy noted that a user agreement would address liability issues.

Voetberg reported that the packet contains a memo from Miranda asking that the Farmer's Market retain certified flaggers, if the market is held in its current location, to address traffic concerns.

Voetberg reported that one of the City Council goals was a citizen review of the Police Department. He noted that Miranda intends to solicit a cross-section of community members to review and make recommendations on the operations of the Police Department.

Voetberg reported that the packet contains two financial reports for FY09/10.

Voetberg reported that the packet contains the monthly suggestion/concern/complaint update. Kilbride asked whether the city had collected more property taxes and budgeted, and Marshall confirmed this. Obtshka noted that the new format is more user friendly.

City Attorney's Report. McCarthy reported that Technical Task Force interviews will be held on September 20 and October 4. She noted that Council will receive materials prior to the September 20 meeting.

McCarthy reported that a sustainability workshop would be held on October 22, 2010, from 8 - 11:30 A.M., at the Oregon Coast Community College, and that Duke Castle will be the presenter. She added that Castle will be the speaker at the Chamber luncheon on that date. She reported that contributions to fund the workshop had been received from Wilder Development (\$1,000), Thompson's Sanitary (\$500), and that the County had agreed to provide refreshments. She noted that the Council needs to authorize \$500 from the Council budget to complete funding of the event. MOTION was made by Patrick, seconded by Obteshka, to fund \$500 of the cost of the sustainability workshop from the City Council budget. The motion carried unanimously in a voice vote.

Voetberg reported that staff is working on revising the local contracting rules for the city and will bring the revisions to Council over the next few meetings.

Voetberg reported that staff is working on the business and room tax code and will probably bring the revisions to Council in October.

ACTION ITEMS

Acceptance of FAA grant for AIP Project 3-41-0040-017. Cossey reported that the issue before Council is the consideration of acceptance of an FAA AIP grant in the amount of \$175,000 for work associated with the airport beacon project, AIP 3-41-0040-017. He noted that Council previously approved a notice of intent to award the bid for the project to E2 Electric. MOTION was made by Obteshka, seconded by Patrick, to accept the FAA AIP grant offer in the amount of \$175,000 for work associated with the airport beacon project, AIP 3-41-0040-017, and authorize the city manager to execute the grant agreement. The motion carried unanimously in a voice vote.

Acceptance of Airport ConnectOregon III grant for AIP Project 3-41-0040-017. Cossey reported that the issue before Council is the consideration of acceptance of a ConnectOregon III Rural Airport grant in the amount of \$10,758 for work associated with the airport beacon project, AIP 3-41-0040-017. He noted that this provides for the remaining 5% of the project cost and fulfills the FAA's five percent match requirement. MOTION was made by Patrick, seconded by Brusselback, to accept the ConnectOregon III Rural Airport's grant award in the amount of \$10,758 for work associated with the airport beacon project, AIP 3-41-0040-017, and authorize the city manager to execute the grant agreement. The motion carried unanimously in a voice vote.

Consideration of awarding tourism marketing grant funds for RSVP's murder mystery weekend event. Voetberg explained that the issue before Council is the consideration of awarding \$1,500 of tourism marketing grant funds for RSVP's murder mystery weekend event to be held on October 8. He added that the Destination Newport Committee had recommended funding of the request. Obteshka stated that he owns a bed and breakfast and is a member of the Nye Beach Merchants Association, but would have no financial benefit. MOTION was made by Patrick, seconded by Bertuleit, to approve the expenditure of \$1,500 from the Room Tax Fund, Event Start-Up Grant line item to fund

the grant request submitted by RSVP for its murder mystery weekend event to be held on October 8, 2010. The motion carried unanimously in a voice vote.

Consideration of using room tax marketing funds for production costs of a tourism related high definition DVD. Voetberg reported that the issue before Council is consideration of using \$10,250 of Room Tax marketing funds for production costs of a high definition DVD to be used for tourism marketing of Newport. He added that \$10,250 represents 50% of the total production costs and will be matched by other non-city sources. He noted that the DVD would be produced by Digital Video Designs, and that the DNC had recommended the use of funds contingent upon Digital Video Designs receiving equal matching funds for each segment of the video. Lorna Davis, executive director of the Greater Newport Chamber of Commerce, noted that this is a good partnership opportunity with Port and Chamber. MOTION was made by Patrick, seconded by Bertuleit, to authorize the expenditure of up to \$10,250 of Room Tax Advertising and Marketing funds, for the production of a high definition marketing DVD, as proposed by Digital Video Designs, contingent upon Digital Video Designs receiving 50% matching funds for each segment produced. The motion carried unanimously in a voice vote.

McCarthy reported that the Chamber board will contribute \$250 toward the sustainability workshop. MOTION was made by Patrick, seconded by Obteshka, to amend the previous motion that authorized \$500 toward the sustainability workshop from the City Council budget, to \$250 from the Council budget toward the sustainability workshop. The motion carried unanimously in a voice vote.

Council took a four minute recess until 7:00 PM.

PUBLIC HEARINGS

Public hearing on an ordinance amending the Newport Comprehensive Plan, Zoning Ordinance, and Municipal Code provisions relating to geologic hazards. Bain read a statement regarding public hearing participation, and noted that a three minute time limit on comments would be observed. He opened the public hearing at 7:03 P.M. He called for abstentions and ex parte contact. There were none. He asked whether there were objections to individual Councilors, or the Council as a whole, in hearing this matter. There were none.

Tokos delivered the staff report. He reported that the issue before Council is whether it is in the public interest to amend the Natural Features Chapter of the Newport Comprehensive Plan, the Geologic Hazards Section of the Newport Zoning Code, and land divisions criteria related to geologic hazards in Title XIII of the Municipal Code. He noted that this matter had been discussed by the Planning Commission, and that the Planning Commission had voted unanimously to recommend adoption of the changes. He added that the city attorney had submitted a memorandum that is included in the Council packet that provides options regarding the matter. McCarthy recommended that Council discuss the issue conceptually rather than engage in wordsmithing this evening. McCarthy reported that the city's insurance company strongly recommended that the liability statement be recorded on deeds.

Bain noted that the applicant is the city and there was no additional presentation.

Bain called for other proponents.

McCarthy read from her memo of September 1, 2010, three options regarding the issue of liability of the city and property owners.

Brusselback referred to the letter from the State Board of Geologist Examiners, dated September 1, and asked whether any of the letter would cause reconsideration of any language in the ordinance. McCarthy noted that she had not conducted a side-by-side analysis, but wanted to see what the City Council said prior to going through the document provision by provision. Tokos stated that it was his intent to make the reconnaissance form as appropriate and usable as possible, and that most comments, in the letter, pertain to the form. McCarthy noted that the reconnaissance form is just one part of the issue.

There were no further proponents.

Bain called for public comment.

Paul Lamont stated that he is an affected property owner. He reported that he is opposed to the amendment and asked Council to reject the amendment in its entirety.

Chris Minor, stated that he is an attorney, acting on behalf of his clients and himself. He stated that the amendment is better than it was and addresses things that need to be addressed. He added that the city does not have to adopt the model ordinance as proposed. He noted that he does not have a problem with the indemnification issue, but does not think the city is liable anyway. He addressed exemptions, particularly utility lines in rights-of-way and easements. He asked whether sandy soils will be mapped. He noted that Exception A. likely exempts the replacement of a building within its original footprint. He noted that he prepared a supplemental memo that was distributed to Council at this meeting. Kilbride asked whether the issuance of a waiver for a permit is enforceable, and Minor noted that he does not think it changes the liability situation.

Mike Rickus stated that he was concerned that Council may take unwise action by adding back to a well-worked geologic hazards document. He recommended that Council not include the waiver in the ordinance.

Bonnie Saxton stated that the Oregon property seller's disclosure statement already contains a question regarding whether the property is in a hazard area. She noted that the Planning Commission took months of testimony to fine tune the ordinance, and recommended that it not be changed. Patrick noted that the disclosure statement must be completed before the real estate agent is paid.

Nyla Jebousek addressed the zoning code. She stated that city documents cannot be relied on to identify hazard areas. She noted that the mobile home park north of the lighthouse was a disaster

Bob Berman stated that the ordinance recommended by the Planning Commission is a good ordinance, and that his major point of contention is the waiver and indemnification. He urged Council to adopt the ordinance brought forward from the Planning Commission.

Roy Filby urged Council to adopt the ordinance presented by the Planning Commission.

Matt Spangler, with the DLCD, stated that the proposed ordinance is a sound recommendation, and he encouraged Council to move forward.

Mary Stupp-Greer addressed Council regarding the stigma of danger in the map due to the red color designating hazard zones.

John Stark thanked the Planning Commission for its extensive and thoughtful review. He expressed opposition to the use of DOGAMI maps to specify properties in or out of hazard zones. He asked that an economic impact analysis be performed.

Bob Ward questioned whether the memo from the city attorney was included in the briefing packets. He urged Council not to add the waiver/liability statement. He addressed the geologic reconnaissance form, noting that it was unacceptable.

Joseph Fahrendorf addressed the stance of the city's insurance company on the indemnity waiver requirement. He asked whether the city would receive a reduction in insurance premiums if the waiver was adopted.

Lloyd Hill stated that he believes the maps are inaccurate, as they indicate two beachfront lots in a high hazard zone, and there has been no erosion. He added that five site specific geologic studies have been conducted on his properties, and he believes that a wealth of evidence demonstrates that this is not an active geologic area. He noted that the two lots are worthless at this point. He stated that the city is not obligated to accept the DOGAMI maps as presented, and asked that the maps be amended to reflect the five site specific studies. He recommended the inclusion of a mechanism to update maps as new information becomes available, and preferably modified before the ordinance is adopted. He suggested that it would be appropriate for a permit to have a shelf life of the report it is based on, and recommended that be five years. He questioned the proposed language in article 2.4.7.035 related to limitations in building and moveable buildings.

Dennis Bartoldus appeared on behalf of the Central Coast Home and Business Owners Association. He recommended approval of the Planning Commission recommendation with an amendment to allow for rebuilding a house on the same footprint.

Christopher Humphrey, representing the State Board of Geologist Examiners, stated that the board generally believes the document to be well-written. He noted that the board's main concern is with the reconnaissance form. He stated that the board requires licensed geologists to provide adequate documentation for all findings.

Toni Columbi stated that she is opposed to the ordinance in all ways.

John Waffenschmidt stated that the regulations in low and moderate areas will not work, and he urged Council to consider dropping the moderate and low zones entirely from the regulations.

Dean Perkins asked Council to drop the requirements for low hazard areas.

Bain called for applicant rebuttal, and there was none.

Bain closed the public hearing at 9:11 P.M., and asked that the matter be brought back to Council after a work session, and that a public hearing be held at that time only on items that have been changed. It was noted that the matter will likely return to Council in October.

Bain asked for Council comment.

Kilbride stated that he is reasonably satisfied with the Planning Commission proposal, and that he is reticent to overturn a Planning Commission recommendation. He cited a California court case where a county was sued due to a landslide. It was determined that the county was not liable.

Brusselback agreed with Kilbride. He noted that he believes the Planning Commission did its homework, and that Council needs to look at the non-conforming use issue. He suggested that staff investigate using another map. He noted that he is

concerned about the colors used on the map and the fact that it is not site specific. He also suggested Council examine the moderate and low zone designations.

Obtreshka stated that he is opposed to adding the waiver/indemnification back into the ordinance. He suggested changing the map color, and recommended further examination of the non-conforming use issue. He recommended eliminating low hazard properties from the requirement. He also recommended looking at the wording on the disclosure requirements.

Patrick agreed with Kilbride. She stated that she is leaning toward the Planning Commission recommendation and would like to revisit issues addressed by Bartoldus and Minor. She noted that she is not going to vote to include the waiver, and that she is concerned about the maps and site specific areas.

Bertuleit agreed with other Councilors, noting that the low or moderate designation is an issue. He expressed concern about the shelf life of the designations.

Bain stated that he is appreciative of the State Board of Geologic Examiners, adding that a standard of practice will resolve the issue. He expressed concern with the liability.

MOTION was made by Patrick, seconded by Brusselback to continue the hearing to October 18, 2010, to take comment on any changes to the proposal. The motion carried unanimously in a voice vote.

ACTION ITEMS

Initiation of a public hearing process to form a City Center area parking district.

Tokos reported that the issue before Council is the consideration of whether Council should initiate a public hearings process to form an economic improvement district in the City Center area for parking system improvements to be funded with a business license surcharge. He added that state law requires that the procedure for forming a district is adopted by ordinance. Patrick reported that she has property in the City Center. MOTION was made by Bertuleit, seconded by Brusselback, to read Ordinance No. 2007, initiating the public hearing process to form an economic improvement district in the City Center area for parking system improvements, pursuant to ORS 223.144, by title only, and place for final passage. Linda Neigebauer addressed Council regarding differences between the Nye Beach Parking District and the City Center Parking District. The motion carried unanimously in a voice vote. Voetberg read the title of Ordinance No. 2007. Voting aye, in a roll call vote, on the adoption of Ordinance No. 2007 were Patrick, Bertuleit, Brusselback, Obtreshka, Bain, and Kilbride.

Amending the water rate schedule to incorporate a no shut-off for convenience policy. Voetberg explained that the issue before Council is the consideration of an amendment to the water rate schedule to incorporate a no shut-off for convenience policy. A lengthy discussion ensued, and the issue was continued to the next meeting.

ADJOURNMENT

Having no further business, the meeting adjourned at 10:18 P.M.

Margaret M. Hawker, City Recorder

William D. Bain, Mayor