

April 15, 2013  
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, Beemer, Allen, Roumagoux, Sawyer, Saelens, Swanson, and Busby were present.

Staff present was City Manager Voetberg, City Recorder Hawker, Executive Assistant Breves, Community Development Director Tokos, Public Works Director Gross, Library Director Smith, Fire Chief Paige, Finance Director Marshall, and Police Chief Miranda.

### PLEDGE OF ALLEGIANCE

Council and the audience recited the Pledge of Allegiance.

### PROCLAMATIONS, RECOGNITIONS, AND SPECIAL PRESENTATIONS

Roumagoux proclaimed April as Distracted Driving Awareness Month in the City of Newport. Police Sergeants Todd Sarazin and Brent Gainer received the proclamation.

Roumagoux proclaimed April as National Older Americans Month in the City of Newport. Peggy O'Callaghan received the proclamation.

### CONSENT CALENDAR

The consent calendar consisted of the following items:

- A. Approval of City Council minutes from the work session and regular meeting of April 1, 2013;
- B. Acknowledgment of accounts paid for March;
- C. OLCC application for LaRoca;
- D. OLCC application for Carl's.

MOTION was made by Beemer, seconded by Saelens, to approve the consent calendar with the corrections to the minutes as noted by Allen. The motion carried unanimously in a voice vote.

### OFFICER'S REPORTS

**Mayor's Report.** Roumagoux requested that Council interview the two applicants for the Budget Committee. Council interviewed Patricia Patrick-Joling and Randy Getman. Roumagoux appointed Patrick to the Budget Committee. MOTION was made by Allen, seconded by Beemer, to ratify the appointment of Patrick to the Budget Committee. The motion carried unanimously in a voice vote.

Roumagoux reported that Janet Webster would like to update Council on happenings at the Hatfield Marine Science Center.

Roumagoux thanked Marshall for participating in the April 3 radio show on KCUP.

Roumagoux reported that she had been the guest speaker at the Newport Senior Services Connection meeting on April 3.

Roumagoux reported that she had attended the quarterly meeting of the Lincoln County Ambulance Service Review Committee on April 9.

Roumagoux reported that she attended Trevor Hawley's Eagle Scout Court of Honor on April 13.

Roumagoux reported that she has been appointed to the OCCC Budget Committee, and will be meeting with that group on April 17.

Roumagoux reported that she was asked to serve on the Joann Hamilton scholarship review committee.

Roumagoux reported that she had received a letter from Allan Wells representing Oregon Community Trees congratulating the city for the Tree City USA benchmark of one year.

Roumagoux requested an excused absence from the April 29, 2013 Town Hall Meeting. MOTION was made by Allen, seconded Beemer, to approve the Mayor's request. The motion carried unanimously in a voice vote.

Roumagoux reported that she will hold office hours tomorrow from 3:00 - 5:00 P.M.

**City Manager's Report.** Voetberg reported that the updated suggestion/concern/complaint report is included in the packet.

Voetberg reported that the monthly departmental reports are included in the packet.

Voetberg reported that the proposed budget contains an increase of \$10 to the business license fee to partially support an economic development position. Allen asked about language in the business license ordinance relative to increases and frequency of increases. Allen requested that Lorna Davis, executive director of the Greater Newport Chamber of Commerce, attend the next meeting to discuss this issue, as the position is projected to be under the direction of the Chamber. He added that he would like to get a sense for the need for this position, and that he is hesitant to raise fees all the time unless it is absolutely necessary. Allen also questioned whether the business license fee could be increased for this purpose. Busby stated that he would like to see some numbers if Council is going to be asked to increase the business license fees.

Voetberg reported that the Transient Room Tax Fund has been subsidizing the city bus loop. He noted that this year, the subsidy was \$85,000, and that it appears that the fund cannot continue to support this subsidy, consequently, the subsidy has been omitted from the proposed budget due to budget constraints and actual use. Voetberg added that since TRT monies are used, the service needs to be tourist related, and there is not much evidence that this is occurring. Allen suggested that someone from the transit district be invited to attend an upcoming meeting to speak to the data. Saelens suggested that partial funding come from another source, and Allen asked whether a component of that funding could be tourist related. Saelens suggested discussing the issue in a work session. Busby asked whether there are any meetings scheduled to discuss Council's philosophical input into the budget. Voetberg noted that the budget is based on Council goals and how staff intends to meet those goals. Voetberg reported that there is no data regarding the use of the service by tourists.

Voetberg reported that the 2013 Farmer's Market agreement has been signed and the market is scheduled to begin on Saturday, May 11, 2013. He noted that each

department was contacted for suggested changes to the agreement and none were received.

Voetberg reported that the Aquarium's new pinniped exhibit, for which the city awarded a \$250,000 tourism facilities grant, is scheduled to open on April 27.

Voetberg reported that the IT office is finalizing a service for the city's website that will allow the public to register to automatically receive information about the city, including meeting agendas, minutes, news releases, RFP's, and bids. It was suggested that a press release be written regarding this service.

Voetberg reported that, from time to time, the city receives comments regarding the Coast Park slide, and at this time, the city will continue to monitor the use of the slide.

Voetberg reported that the packet contains an agenda for the Newport Ocean Observation Conference scheduled for April 29 - May 1. He added that the conference is intended to increase awareness of Newport's potential to businesses and investors of this industry.

## DISCUSSION ITEMS AND PRESENTATIONS

**New Tsunami Evacuation Maps and Planned Activities.** Sergeant Garbarino, of the Newport Police Department, and Assistant Fire Chief Murphy, made a presentation on the new tsunami evacuation maps and planned activities.

**Police Award.** Miranda presented a distinguished service award to Sergeant Gainer for his work on the Thomas Acosta case that resulted in a conviction. He added that the case was difficult as the victim, April Loper, died in a motor vehicle accident before Acosta's trial.

**Fire Collaboration Update.** Paige made a PowerPoint presentation regarding the status of the coastal fire collaboration efforts. He reported that the Collaboration Committee met to review questions and concerns of stakeholders and compiled a list of strengths, weaknesses, opportunities, and threats to potential collaboration. He noted that the representatives of each agency will forward their major concerns and potential solutions to the fire chiefs. During May, the chiefs will meet to develop answers, plans, and detail to help address concerns and questions. He added that the group will meet in late May to discuss those results. Paige noted that the contract between the city and the Newport Rural Fire Protection District needs to be rewritten.

## PUBLIC HEARINGS

**Public Hearing and Possible Adoption of Revisions to the Newport Comprehensive Plan Map Expanding the Urban Growth Boundary to Incorporate Lands Surrounding the City's Domestic Water Storage Reservoirs.** Beemer recused himself because his brother-in-law owns property in the area. He left the dais. Roumagoux opened the public hearing at 7:00 P.M., and asked for the staff report. Tokos reported that the issue before Council is to accept public comment regarding whether it is in the public interest to expand the Urban Growth Boundary to include Big Creek Reservoir #1 and Big Creek Reservoir #2, which are the city's primary storage facilities for its domestic water supply. He added that lands immediately adjacent to these facilities that might be impacted by

future water system improvements are also included in the proposal. He stated that the properties would be placed under a "Public" Comprehensive Plan Map designation, and if annexed would be zoned for public use. He added that the total size of the expansion is 354.5 acres. Tokos reported that the Planning Commission considered the proposal and provided a favorable recommendation.

Tokos explained that during the construction of the city's new water treatment plant, potential stability issues were discovered with Big Creek Reservoir #1. He added that HDR was commissioned to conduct a preliminary geotechnical investigation which found structural deficiencies in both dam structures. He added that while technical analysis is ongoing to establish the full extent of the problem and range of potential solutions, it is possible that the city may be required to reconstruct one or both of the reservoirs in the future.

Tokos reported that the lands are currently under the jurisdiction of Lincoln County and subject to state mandated Timber-Conservation zoning. If the dams failed, with the current zoning, he noted that the best scenario would allow the reconstruction work subject to a conditional use permitting process intended to protect commercial timber interests from conflicting uses. He added that the water storage and treatment facilities are already committed to urban uses that are inconsistent with the Timber-Conservation zoning. He noted that bringing the lands into the UGB under a "Public" Comprehensive Plan designation positions the city so that it can annex the properties it owns and place them under the appropriate zoning classification where the uses are permitted outright.

Tokos noted that another reason for expanding the UGB is to lay the groundwork for future construction of a regional city park with a looped trail system around both reservoirs. He added that it is a goal of the city to establish at least a 1,000 foot buffer around the reservoirs for water quality purposes, and this goal would be accomplished through non-regulatory strategies including land acquisition and other voluntary measures.

Tokos reported that two of the affected landowners, Bob Etherington and Norm Ferber, testified in opposition to the proposal. It was noted that the access road would have to be relocated when the city performs work in that area, and that the city would have an obligation to relocate the road.

Tokos noted that Etherington's concern is that he would be forced to annex. He added that the proposed boundaries were established anticipating all likely scenarios regarding possible future improvements to the reservoirs. Tokos noted that UGB expansions must be approved by both the city and county, and that the county process will occur after the city has adopted the changes. He added that the county would like the city to take over jurisdiction of Big Creek Road which would be done after the UGB amendment when the city annexes lands that it owns inside the expansion area. Tokos added that there are some issues with the legal description of Big Creek Road and that Lincoln County would be asked to resolve the issues. He reported that there is no intention to alter the fishing access unless the city is mandated to make changes to further protect the domestic water supply. It was noted that the UGB expansion will not impact the tax base because most of the acreage is city-owned, and the 45 acres of privately owned land will not impact the tax base due to zoning.

Roumagoux called for public testimony.

Patrick Wingard, DLCD representative, reported that DLCD heavily scrutinizes all UGB amendments. He stated that DLCD is taking an actively neutral position on this

UGB expansion. He noted that the city began with a larger proposal and has reduced the size. He added that he would like to know why the city would not simply annex the land, as the response to this question will facilitate his ability to build a strong case for the director of DLCD. He noted that Lincoln County is a strong partner, and the city and county have a history of positive working relationships. Saelens asked why some parts of the proposal seem too small for watershed protection, and whether the city should be looking at a larger expansion for watershed health. He noted that this is a big process, and he would not want to find, in a few years, that the boundaries should have been larger. Tokos reported that if the city had jurisdiction outside the current city limits, it would be similar to timber-conservation zoning with a conditional use process. He added that he does not feel this is appropriate to this type of use. Saelens asked about expanding the proposed UGB boundary, and Tokos reported that the city did initially plan for a larger expansion, but the issue that arose is whether the city could justify the expansion on a water quality protection basis. He added that there are water quality protections under the state timber processes. He noted that to make this work, the city scaled back to reflect the actual developments that are anticipated, including the loop trail system and reservoir work, along with maintaining a policy with the objective to acquire lands in watershed. Allen asked whether there are any properties identified solely for the loop trail system. Tokos noted that there are no properties identified solely for the loop trail purpose. Allen asked whether this proposal is the bare minimum for reservoir purposes.

Dennis Bartoldus, representing Robert and Linda Etherington, distributed a letter to Council and submitted the original to Tokos for the record. Bartoldus reported that Etherington represented himself before the Planning Commission. He stated that he has discussed with Tokos the idea that the Etherington property serves no purpose within the UGB. He added that this property is a six acre parcel that is not subject to inundation as it is 90 feet above the reservoir. Bartoldus stated that his proposal to Tokos was that the Etherington's understand the city's position, and would be willing to give the city the right of first refusal when they sell their property. Bartoldus reported that Wingard raised some issues in his letter of February 8, and that he concurs with Wingard. Bartoldus stated that the road is not included in the Etherington's property, so the city would still have the road. He added that not many county roads are actually built where they are described. Bartoldus extended an offer to work with the county or city on the legalization of the road in an appropriate location. Bartoldus stated that one of his client's concerns relates to the possibility of a forced annexation. Bartoldus stated that a public facilities overlay on private property on which the Etherington's currently have a residence would devalue the property due to the public designation. Bartoldus stated that Ordinance No. 2049 shows that there will be too much land in the Big Creek area, and the excess land will likely be considered for residential purposes. He stated that this seems contrary to watershed protection. Bartoldus added that if you look at the body of cases developed over the years, the guiding principal is that cities are only allowed to take into the UGB what they will need for the foreseeable future. He added that the state administrative rules allow timber conservation lands outside the city limits. Bartoldus stated that he is concerned with the city's line of logic. He added that while the CUP process may be cumbersome, the city requires CUPs for all sorts of things, and it appears that the city does not want to do what it requires of its citizens. He noted that as a philosophical matter, this is a double standard. He asked whether one government entity has to

respect the rights of another government entity, noting that there has already been a collaborative effort between the city and county. He added that not trusting the county flies in face of state rules as there is already a system set up where the city can have what it wants. Bartoldus asked whether the city needs much land. It was noted that there are 47 acres of private land included in the proposal. Allen asked whether the Etherington's property was included because of the uncertainty of the legalization of the road. Bartoldus stated that it is needed for part of the loop trail system. Bartoldus stated that under this inundation map, Etherington's property won't play any role. He added that he will work with city on the legalization of Big Creek Road. Tokos stated that the road legalization issue was not the reason the property was included. He added that the property was included because the city does not know the full scope of future water related improvements, and therefore whether it will impact the Etherington property. He added that he does not want a portion of a future project to stand outside the boundary. Allen asked if the road legalization process might impact boundaries, and whether there is a reason the city cannot defer to that process. Tokos noted that the legalization process does not have much impact on this. He added that the legalization process is relative to an as-traveled roadway. Bartoldus stated that his client has no issue legalizing the as traveled roadway. He stated that he understands the need and concern the city has for wanting to do this, but that the fact is that the city is not following the right procedure. He added that he is seeing the preliminary phase of things, noting that a lot more engineering needs to take place. Busby asked whether decreased property value is the Etherington's only concern, and whether it is also the increased threat of annexation and control by city. Saelens stated, speaking as citizen and member of the City Council that the issue is clear, and that he is satisfied with what he has seen between city staff and DLCD. Saelens supported the Etherington's giving the city the right of first refusal and the offer of assistance in legalizing the road. Bartoldus stated that, as an attorney, he must create a record in the event this matter is appealed to LUBA or the Court of Appeals. He noted that he is charged with showing that this proposal, when under scrutiny, does not pass muster under state land use laws. He stated that he is raising issues because they are real live issues. Tokos reported that Gross feels comfortable that if the road was scaled back, the impact to the Etherington's property would be 60 feet, and that along with the right of first refusal would meet the city's needs. Bartoldus requested that the record be left open for seven days. Bartoldus stated that his client is looking for a common ground. Allen asked Wingard whether there are UGB expansions that DLCD supports. Wingard noted that there are cases, but that it is difficult to support all expansions. Wingard added that he is trying to get to a point where DLCD does not oppose the proposal.

Norm Ferber reported that he testified twice before the Planning Commission and had conversations with staff. He inquired about the process for potential annexation and notification of affected property owners. Ferber added that he wants to be able to access his property, and that he is concerned with the potential diminished property value. Allen asked whether there is something more formal that could be acknowledged in the record. Allen suggested that a recital be added to the findings that would agree to the restoration of access if it was impeded.

Bartoldus agreed with the recommendation to hold the record open for seven days.

Roumagoux closed the public hearing for Council deliberation at 8:37 P.M.

MOTION was made by Allen, seconded by Saelens, to keep the record open for seven days from today's date with respect to Ordinance No. 2050, with respect to the expansion of the UGB, and set this matter for further consideration at the City Council meeting of May 6. The motion carried unanimously in a voice vote.

## DISCUSSION ITEMS AND PRESENTATIONS

**Recommendations for Utility Fee Increase.** Gross made a PowerPoint presentation that included the water enterprise fund; wastewater enterprise fund for FY 12 and FY 13 along with the proposed water and wastewater enterprise funds for FY 14 which includes a 15% rate increase. He also reviewed the FY 13 infrastructure fee and stormwater utility fee, and the proposed five percent increases to these fees for FY 14. He noted that a public hearing needs to be scheduled within the next few weeks, and recommended proceeding with the five year increase plan. Busby asked that staff be prepared to show the schedule and cost variance explanation across all capital projects for the past year, which will show performance to date. He added that this will go a long way toward raising confidence. Allen asked for a copy of the Chase Park Grants agreement.

## ACTION ITEMS

**Notice of Intent to Award the Roadway Improvement Project - SE Ash Street.** Gross reported that the issue before Council is the issuance of an intent to award the Roadway Improvement Project for SE Ash Street to Clackamas Construction in the amount of \$330,296.00, and contingent upon no protest, authorize award and direct the City Manager to execute the contract after seven days on behalf of the City of Newport. Gross explained the reason for the number of bidders. MOTION was made by Beemer, seconded by Sawyer, that the City of Newport Public Works Department issue a notice of intent to award the Roadway Improvement Project - SE Ash Street to Clackamas Construction in the amount of \$330,296.00, and contingent upon no protest, authorize award and direct the City Manager to execute the contract after seven days on behalf of the City of Newport. The motion carried unanimously in a voice vote.

**Consideration of Ordinance No. 2053, Governing the Sale or Transfer of Real Property to Governmental or Non-Profit Entities.** Tokos reported that the issue before Council is the consideration of Ordinance No. 2053 that establishes a procedure for the sale or transfer of city-owned properties to governmental or non-profit entities. MOTION was made by Allen, seconded by Beemer, to read Ordinance No. 2053, regarding the sale or transfer of city-owned properties etc. by title only and place for final passage. The motion carried unanimously in a voice vote. Voetberg read the title of Ordinance No. 2053. Voting aye on the adoption of Ordinance No. 2053 were Allen, Beemer, Busby, Roumagoux, Swanson, Saelens, and Sawyer.

**Consideration of Resolution No. 3624 Approving a Model for Communication with the City Attorney.** Allen reviewed the changes to the model of communication made at the March 8, 2013 work session. MOTION was made by Allen, seconded by Beemer, to adopt Resolution No. 3624, approving a model for communication with the City Attorney,

and make the appropriate changes to Section E., on page 13, of the General Council Rules contained in the City Council Rules. The motion carried unanimously in a voice vote.

### **COUNCIL REPORTS AND COMMENTS**

Sawyer reported that he attended a recent meeting of the Siletz City Council, and that it was interesting to see the dynamic.

Saelens reported that he had attended a recent meeting of the Bicycle/Pedestrian Committee and had reviewed the meeting at the work session. He noted that the Parks and Recreation Committee will meet later this week.

Swanson reported on a recent meeting of the Senior Advisory Committee, at which upcoming activities were discussed. She noted that the tax assistance served nearly 300 people. She invited Council and staff to the senior month luncheon on May 2.

Saelens suggested Council receive an e-mail regarding the May 2 event.

Busby noted receipt of the monthly distribution report from the Finance Department. He reported that he attended a recent Airport Committee meeting, and the box hangar lease is being revised.

Allen reported that he will be able to attend the Audit Committee meeting later this week. Saelens noted that he also plans to attend.

Allen reported that the City Manager Evaluation Process Sub-Group held its first meeting. He noted that the minutes from the meeting are posted on the city's website, and that the next meeting will be held on May 2, at 10 A.M., at which there will be a review of evaluation forms used in other communities, and information gathered from a Caryn Tilton webinar. Allen reported that the group concluded that the annual evaluation of the City Manager should be held in late September, and that updates of Council goals be held in September, January, April, and June. He noted that an amendment to Voetberg's employment agreement would be required to hold the annual evaluation in September. Council concurred that staff draft an amendment to Voetberg's employment agreement and bring it to Council for consideration.

### **ADJOURNMENT**

Having no further business, the meeting adjourned at 9:49 P.M.

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Margaret M. Hawker, City Recorder

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Sandra N. Roumagoux, Mayor