

August 31, 2015
Noon
Newport, Oregon

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

Staff attending was as follows: City Manager Nebel, City Recorder Hawker, Community Development Director Tokos, Finance Director Murzynsky, City Attorney Rich, and Police Chief Miranda.

ADDITIONS TO AGENDA

It was agreed to amend the agenda to include a discussion regarding the September 8 City Council meeting agenda.

AGATE BEACH WAYSIDE IMPROVEMENT PROJECT - DISCUSSION AND POSSIBLE ACTION REGARDING FUNDING

Nebel reported that in 2011, the city and county funded a series of design charrettes to develop a concept for how the Agate Beach Wayside could be improved to better serve tourists and the local community. He stated that the information from the charrettes was used to prepare a Federal Highway Administration (FHWA) Scenic Byways Grant application, which was submitted later that year. He noted that in August of 2012, the city was informed that it received grant funding for the project in the amount of \$557,696 (later increased to \$558,576). He added that an Intergovernmental Agreement (IGA) between the city and state was executed in July of 2013. He noted that despite numerous requests from the city, the project was stalled until staff contacted state elected officials. He stated that the earlier schedule for ODOT to proceed with the work was not met, and now the city and ODOT are up to the "drop dead" deadline to commit these funds. He stated that ODOT finally initiated the process of securing a design consultant in February of 2014. He added that in September of 2014, the consulting firm OTAK was selected to design the project and prepare the bid documents. He noted that an amendment to the IGA was adopted in January of 2015. He added that the amendment pushed the deadline, for obligating federal funds, to September 30, 2015, which is the last day this can occur before the grant funds are forfeited. He stated that the amendment also established September 15, 2016 as the deadline by which construction must be completed. He noted that with the two-year delay in getting the contract initiated from the time that the grant was awarded, additional costs have been incurred by ODOT in administering this grant, and the costs for construction have increased significantly.

Nebel reported that the project components include construction of a restroom and showers at the wayside; reconfiguration of the parking area to increase the number of available spaces; reconfiguration of the wayside and US 101 access to improve public safety; construction of sidewalk along NW Circle Way (undeveloped) and NW Gilbert Way between the wayside and trail accessing the north end of Agate Beach; drainage

improvements and repair of the outfall adjacent to the Agate Beach Motel; new stairs and pathway improvements to address safety problems along the beach access trail; and the extension of NW Gilbert Way through to US 101 to provide a secondary access into the neighborhood.

Nebel reported that ODOT initiated project design on September 16, 2014 and a kickoff meeting was held September 24, 2014. He stated that staff conducted public outreach meetings on November 18, 2014 and December 18, 2014 to provide the design and a public "open house" on the final design was held on March 11, 2015. He noted that final design, permits, plans and specifications were completed earlier this month, with the final engineer's estimate being completed on August 27, 2015.

Nebel reported that the engineer's construction estimate and design expenses incurred by the state and its contractor's now put the total project cost at \$910,441. He stated that this puts the project at \$212,441 over the existing budget. He noted that pursuant to the IGA, the city is responsible for the shortfall and must demonstrate that it can cover that amount plus an additional "contingency" before the project can proceed to construction. He stated that this amounts to \$255,686 of supplemental appropriations by the city.

Nebel reported that the final design is complete and the project is ready to be submitted to the Federal Highway Administration (FHWA) so that construction funds can be obligated. He stated that because actual design costs and the engineer's construction estimate exceed the original budget, ODOT is requiring that the city confirm that it can provide the additional funds. He noted that this must be done by September 1 in order for there to be enough time for the plans to be reviewed and signed off by FHWA prior to the September 30, 2015 deadline for construction funds to be obligated. He added that the city will need to obligate \$345,445 in order to move forward with this project. He stated that this amounts to an additional \$263,021 from what is currently budgeted. He noted that the IGA between the city and state, authorizing the state to administer this federal-aid project, requires the city to cover 100% of any cost overruns attributed to ODOT, its consultants, and contractors, even though the city has not had control over the timing and oversight of this effort. He stated that the city has not, and will not, charge any staff expenses to the project.

Nebel reported that it is his opinion that this is a very important project that will eliminate neighborhood problems and enhance Newport as a tourist destination on US 101. He stated that while committing funding for the overages for this project is never fun, the loss of \$560,000 of federal funding for a project that will truly address some long standing transportation and neighborhood problems is not acceptable. He noted that staff is working with ODOT to provide a portion of these local costs. He added that staff is also working with the Surfrider Foundation for project participation that would reduce the contract costs. He stated that the Surfrider Foundation is committed to reviewing certain aspects of this project that could be done with volunteers to reduce overall costs. He stated that he believes that the city will receive some additional resources to help offset a portion of the cost overruns, but recommended that Council commit to the necessary funding in order to have ODOT proceed with the bidding for this project prior to the September 30 deadline. He noted that if this process does not go ahead on that date, the funding will be returned by ODOT to the federal government since the federal program will expire for any uncommitted funds on that date.

Busby asked about appropriating half of the needed amount to use as leverage with ODOT. Tokos reported that ODOT has given the city a “drop dead” deadline. Engler asked whether it is possible to eliminate a portion of the project. Sawyer asked whether there are other cuts that could be made. He also asked what projects would be affected by taking \$60,000 from the Transient Room Tax Fund. It was noted that no projects would be affected. Sawyer asked whether the city could sue ODOT. Allen added that the use of the Transient Room Taxes is a lost opportunity cost. It was noted that ODOT has spent \$270,000 for engineering; has created this delay; yet the city is obligated to reimburse ODOT for the engineering costs if the project does not move forward. Nebel noted that some of the increased engineering costs were due to the delay as well as FHWA requirements. Busby inquired about the financial risk if the city moves forward. Nebel noted that the risk is low due to generous projections. He also reported that the Surfrider Foundation is willing to perform some of the work on the project. Allen inquired, and Nebel confirmed that an additional \$80,000 appropriation will allow the project to be built, which is the difference between the revised local match of just over \$350,000, and the \$270,000 the city will be required to reimburse ODOT if the project does not move forward.

MOTION was made by Engler, seconded by Busby, to appropriate \$60,000 from the Street SDC contingency account #253-3610-98100 Wayside Project, and increase 253-3650-90402 by \$60,000, transfer to Capital Projects, and increase the transfer from the SDC Fund, 402-6110-49253 by \$60,000, and increase account \$402-6110-75200, Project #13010, which will reduce funds in the Street SDCs contingency from \$384,342 to \$324,342. Allen stated that based on the questions and answers, no one is happy, but that he is inclined to vote in support of this motion, although he has issues with ODOT. Busby agreed with Allen, and suggested that pressure be applied to ODOT. Sawyer agreed with Allen and suggested initiating a lawsuit with ODOT. The motion carried unanimously in a voice vote.

MOTION was made by Engler, seconded by Swanson, to appropriate \$60,000 from Room Tax Contingency account #230-4310-98100, and increase 230-4310-90402 by \$60,000, transfer to Capital Projects, and increase the transfer from the Room Tax Fund, 402-6110-49230 by \$60,000, and increase to the Agate Beach Wayside Project, under account #402-6110-75200, Project #13010, reducing funds in the Room Tax contingency from \$126,381 to \$66,381. Allen noted that he is voting affirmatively, but on the same basis as the previous motion. The motion carried unanimously in a voice vote.

MOTION was made by Engler, seconded by Swanson, to appropriate \$180,000 from the NW 6th Street Storm Sewer project under account #402-6110-75200, Project #13002, to the Agate Beach Wayside Project under account #402-6110-75200, Project #13010. Allen noted that he is voting affirmatively, but on the same basis as the first motion. The motion carried unanimously in a voice vote.

Sawyer thanked Charlie Plybon and the Surfrider Foundation for its willingness to help with the project. He stated that Tokos had done a good job in making sure that all interests were covered. He recommended that pressure be brought on state elected officials and ODOT for this issue. It was asked that Nebel request that ODOT waive all administrative charges on this project. A discussion also ensued regarding the Highway 101 storm sewer. Sawyer asked whether ACT money could be used for this project, and Tokos responded that it could not be used, but that he planned to submit a STIP project.

DISCUSSION REGARDING RECREATIONAL MARIJUANA AND THE POSSIBLE EARLY SALES OF RECREATIONAL MARIJUANA BY MEDICAL MARIJUANA FACILITIES

Roumagoux reported that there was a session regarding marijuana at the Coastal Economic Caucus. Nebel reported that the City Council requested a work session to better understand the issues surrounding medical marijuana dispensaries selling recreational marijuana. He stated that recreational marijuana may be sold by medical marijuana dispensaries on October 1 unless Council takes action to prohibit medical dispensaries from selling recreational marijuana. He added that in reviewing the draft rules, it appears the regulatory processes adopted by Council to deal with dispensaries will remain intact for those dispensaries that choose to sell recreational marijuana. He noted that the only potential change that Council may want to make to the code, relating to this matter, would be to change the definition of medical marijuana to clearly reflect the fact that the code provisions apply equally to recreational marijuana sold at medical marijuana dispensaries. He added that the packet contains a copy of the Oregon Administrative Rules on this issue. He stated that most of the changes affecting recreational marijuana begin on page 10 of the rules. He noted that he also included a copy of the city's medical marijuana facilities code provisions in the packet. He stated that the only potential change he is recommending would be to tweak the definition in the Newport Municipal Code related to the definition of a medical marijuana facility. He noted that the OLCC will likely implement rules for growers first; processing next; and retail last, but that all rules should be in place by the fall of 2016.

A discussion ensued regarding the code requirement to issue business licenses to businesses that are in compliance with the law. Rich suggested modifying the code to require compliance with Oregon law. Allen suggested removing reference to federal law and only refer to local and state laws. Rich noted that this would help avoid the greatest amount of problems for the city. Saelens noted that mixing medical and recreational marijuana opens a "Pandora's box," and that there are sound reasons for keeping the two separate.

Nebel reported that the state is prepared to accept cash payments from marijuana retailers. Allen asked how the new rules will mesh with the OHA rules. He asked whether the rules could be added as a part of the review process for licenses, and it was noted that this is possible. Saelens stated that he has not heard any complaints regarding medical marijuana dispensaries. He added that he is against marijuana, but the law has passed, and that he prefers to wait on the sale of recreational marijuana until the OLCC rules are issued next year. Engler asked about Lincoln City and Toledo. It was noted that Lincoln County and Waldport have approved the sale of recreational marijuana from medical marijuana dispensaries, but that Lincoln City did not. Saelens stated that the black market, in Colorado, was fueled by taxes. Allen noted that the state will collect taxes on the early sale of marijuana, and the local jurisdictions will get a portion of the taxes until the end of 2016.

Nebel stated that staff would bring two ordinances to the September 8 meeting: one banning the sale of recreational marijuana from medical marijuana dispensaries; and one that would tweak Chapter 4.20 of the Newport Municipal Code, related to medical marijuana facilities, and allowing the early sale of marijuana from medical marijuana dispensaries in the city.

Allen noted that the public will have an opportunity to comment on this issue on September 8. It was agreed to hold another public hearing on the issue of allowing the sale of recreational marijuana, from medical marijuana dispensaries, at the September 8 City Council meeting. Allen asked that any changes to the Oregon Health Authority rules, if available, be placed in the upcoming Council packet.

DISCUSSION REGARDING THE SEPTEMBER 8, 2015 CITY COUNCIL MEETING AGENDA

Busby stated that he is interested in hearing alternatives at the presentation on the dam study which is scheduled for a work session on September 8. He added that he would like to hear a discussion of alternatives without having made a decision to replace the dams. He asked whether the dams should be replaced, and recommended using empirical data to justify the replacement. Nebel noted that this will be an informational meeting, and no action will be taken until the meeting of September 21.

Nebel reported that a group had asked to make a presentation on fluoride at the regular meeting of September 8. It was noted that OLCV wants to bring a speaker from Portland, along with a local representative, to talk about fluoride. Allen asked whether these speakers wanted to express a personal opinion and desiring more than three minutes for themselves, or whether they were truly representative of a group. Nebel noted that no action will be taken at this meeting on the fluoride issue, and suggested limiting the comments to three minutes. He added that if Council wishes to hear comments on the pros and cons of fluoride, this could occur at a later date. He noted that the only decision to be made at the September 21 meeting is to determine the next step. Engler noted that anyone can submit written comments. Busby stated that the staff needs to provide input regarding the cost issue and the matter of employee health from handling, and working near, the substance. Allen agreed that it is important to make the cost and employee health issues known so that the public can comment on those components.

EXECUTIVE SESSION PURSUANT TO 192.660(2)(E) REGARDING REAL PROPERTY TRANSACTIONS

MOTION was made by Allen, seconded by Saelens, to enter executive session pursuant to 192.660(2)(e) to discuss real property transactions. The motion carried unanimously in a voice vote, and Council entered executive session at 1:10 P.M.

MOTION was made by Swanson, seconded by Saelens, to leave executive session, and return to the special City Council meeting. The motion carried unanimously in a voice vote, and Council returned to its special meeting at 1:48 P.M.

COUNCIL COMMENTS

A discussion ensued regarding the NW 6th Street storm sewer project, and it was noted that construction may be delayed until July 1, 2016, but that the engineering would likely be completed during this fiscal year. Nebel explained the funding.

Sawyer requested that Council receive an e-mail after Nebel's return telephone call to ODOT.

Saelens asked about the traffic flow throughout Newport on Highway 101. Nebel noted that he would discuss, with ODOT, a signalization study.

ADJOURNMENT

Having no further business, the meeting adjourned at 1:53 P.M.

Margaret M. Hawker, City Recorder

Sandra N. Roumagoux, Mayor