

MINUTES
REGULAR CITY COUNCIL MEETING
OF
October 9, 2017
5:30 p.m.

THE DALLES CITY HALL
313 COURT STREET
THE DALLES, OREGON

PRESIDING: Mayor Stephen Lawrence

COUNCIL PRESENT: Russ Brown, Taner Elliott, Tim McGlothlin, Darcy Long-Curtiss

COUNCIL ABSENT: Linda Miller

STAFF PRESENT: City Attorney Gene Parker, City Clerk Izetta Grossman, Finance Director Angie Wilson, Planning Director Steve Harris, Public Works Director Dave Anderson, Police Chief Patrick Ashmore, Human Resources Director Daniel Hunter, Assistant to the City Manager Matthew Klebes

CALL TO ORDER

The meeting was called to order by Mayor Lawrence at 5:30 p.m.

ROLL CALL

Roll call was conducted by City Clerk Grossman, Councilor Miller absent.

PLEDGE OF ALLEGIANCE

Mayor Lawrence invited the audience to join in the Pledge of Allegiance.

APPROVAL OF AGENDA

Mayor Lawrence added Action Item #10-D Protest related to Contract No. 2018-004 Airport Fix Base Operator to the agenda. It was moved by Elliott and seconded by Long-Curtiss to approve the agenda as amended. The motion carried, Miller absent.

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PRESENTATIONS/PROCLAMATIONS

Tri-County Hazardous Waste & Recycling Program Update – David Skakel

Mayor Lawrence asked about S.T.R.U.T having problems due to no market for recycled electronics. Mr. Skakel said he would follow up with the director.

Skakel said starting January 1 China had placed a worldwide ban on specific recyclables, due to contamination. He said the DEQ was creating a group to address the issue and what could be done.

Skakel said with A&P closing a new cardboard recycler was needed. He said Emerald Connections was in need of a large indoor location in The Dalles.

Skakel said there would be a stakeholders meeting toward the end of October, including the City, County, Tri County Hazardous Waste and The Dalles Disposal.

AUDIENCE PARTICIPATION

James Cyphers, 819 Irvine, owner Cup O Mud, asked for Council assistance to receive a variance on the requirement for a toilet at his drive through coffee stand. He said he had the same business at the location in the past and was allowed to use the Chamber restroom.

Mayor Lawrence suggested they speak with Dave Meriweather at Mid Columbia Council of Governments to see if he could assist.

City Attorney Parker said the City didn't have jurisdiction over the health department, or State laws.

Councilor Long-Curtiss and Mayor Lawrence offered to go with them to talk to Mid Columbia Council of Governments.

CITY ATTORNEY REPORT

City Attorney Parker reported that he and the City Clerk were reviewing the codification legal review from Quality Code. He said he was hoping to be able to make the updates to the code with one ordinance.

He said he would be bringing water and sewer ordinance updates to the Council in November.

Mayor Lawrence asked if the Council would receive a summary of the codification review.

City Clerk Grossman said she would provide Council with a copy of the report if they so desired.

CITY COUNCIL REPORTS

Councilor Long-Curtiss reported on the Community Outreach Team trip to Washington DC. She said the team consisted of Andrea Klaas, Port of The Dalles; Greg Weast, Port of The Dalles; Scott Hege, Wasco County and herself. She said:

- The team requested assistance in funding for the Maupin Broadband project
- EDA asked them for shovel ready projects – she said Dave Anderson was very helpful getting them information.
- Don't snail mail things to representatives in DC – it takes two weeks for them to get mail (it has to be screened)

She said she also attended the League of Oregon Cities for the first time. She said Human Resources Director Hunter, Assistant to the City Manager Klebes and the Mayor were all in attendance. She said the Homeless Forum was informative.

Councilor Elliott said QLife was working on funding for the Maupin project. He said bids were coming in over budget. He said Councilor Long-Curtiss and Carrie Pipinich at Mid Columbia Economic Development District were looking for grant opportunities. He said the City of Maupin was looking into what they could do in the form of some of the labor on the project.

In honor of Gorge Happiness Month Elliott thanked everyone for attending the meeting.

Councilor Brown said he was happy he had a peppermint patty.

Mayor Lawrence reported on attending:

- A meeting with the railroads
- League of Oregon Cities conference

He said Darren Nichols was the moderator for the railroad meeting. He said Nichols was one of two finalists for the League of Oregon Cities Director.

CONSENT AGENDA

It was moved by Long-Curtiss and seconded by McGlothlin to approve the Consent Agenda as

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presented. The motion carried, Miller absent.

Items approved by Consent Agenda were: 1) Approval of the September 18, 2017 Tourism Work Session meeting minutes; 2) Approval of September 25, 2017 Regular City Council Meeting Minutes; 3) Authorize City Manager to sign Agreement with Merina and Co. for audit services; 4) Approval of Port of The Dalles Waiver of Site Plan Review Application Fee for an Expansion of Klindt Cove Kiwanis Park.

ACTION ITEMS

Approval of Resolution No. 17- 022 Approving the Enterprise Zone Tax Abatement Agreement Between the Sponsors of the City of The Dalles/Wasco County Enterprise Zone and Columbia Phytotechnology, LLC DBA PowderPure.

Assistant to the City Manager Matthew Klebes presented the staff report.

Councilor Brown asked who monitored the wage requirement. Klebes said businesses had a form they provide to Business Oregon for the State.

Mayor Lawrence and Councilor McGlothlin said that PowderPure was a growing business, with new owners who were putting money into the business locally.

Councilor Elliott asked what would happen if they didn't meet the employment requirements.

Klebes said the agreement would be terminated and all taxes would be due.

It was moved by Long-Curtiss and seconded by McGlothlin to approve Resolution No. 17- 022 approving the Enterprise Zone Tax Abatement Agreement between the Sponsors of the City of The Dalles/Wasco County Enterprise Zone and Columbia Phytotechnology, LLC DBA PowderPure. The motion carried, Miller absent.

Approval of Extension of Exclusive Negotiating Agreement with Tokola Properties for Redevelopment of Tony's Building Properties

Planning Director/Urban Renewal Manager Steve Harris reviewed the staff report.

Mayor Lawrence asked why the City was being asked to approve the extension.

City Attorney Parker said the original agreement was between the Urban Renewal Agency, the City of The Dalles and Tokola.

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Mayor Lawrence said he would like to have an open session update on the project given to City Council.

Long-Curtiss said she didn't want to keep making extensions. She said that had happened in the past and moving forward she felt it was not a good idea to continue extending Exclusive Negotiating Agreements.

Urban Renewal Manager Harris said the agreement in 2013 had expired, and in 2016 they had been granted two 120 day extensions.

Councilor Elliott said there had been some hiccups during the time the new board was appointed and the new Urban Renewal Manager came on board.

It was moved by McGlothlin and seconded by Elliott to approve Extension of Exclusive Negotiating Agreement with Tokola Properties for Redevelopment of Tony's Building Properties. The motion carried, Long-Curtiss opposed, Miller absent.

Request from Chuck Gomez for Marketing Funds for the Granada Grand Re-opening

City Attorney Parker presented the staff report.

Mayor Lawrence asked Mr. Gomez if he wanted to comment.

Mr. Gomez restated his request. He said he had not heard back from the Chamber on the status of his grant request, and time was running short to advertise the weekend long event honoring veterans.

He said he had been contacted by a number of businesses wanting to sponsor and partner with the Grand Re-opening of the Granada. He said it was a unique opportunity to put The Dalles on the map, and announce the Granada reopening with authority.

Gomez said it wasn't just about the Granada it was about getting attention for all of downtown, and bringing people to town.

Councilor Brown said he would love to give Gomez the funding, but there was a policy in place that needed to be followed. He said he wasn't comfortable using contingency.

Councilor Elliott said he couldn't drive downtown without noticing the renovation and energy downtown. He said he loved it. He said he couldn't support using contingency funds. He agreed with Brown that the policy needed to be followed.

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Councilor McGlothlin said he saw a lot of positive and would be in favor of a smaller amount.

Councilor Long-Curtiss said Urban Renewal and the City had given a lot to the Granada. She said the Granada was a for profit business. She said Mr. Gomez was a great salesperson, but she didn't appreciate his approach.

Mayor Lawrence said Gomez was exactly what the Granada needed. He said he loved the enthusiasm.

Mayor Lawrence said Gomez didn't have Council support of the grant.

Mayor Lawrence and Councilor McGlothlin said they would help Gomez with sponsorships from businesses.

Protest Related to Contract No. 2018-004 for the Fixed Base Operator at the Columbia Gorge Regional Airport filed by GAS

City Attorney Parker reviewed the staff report.

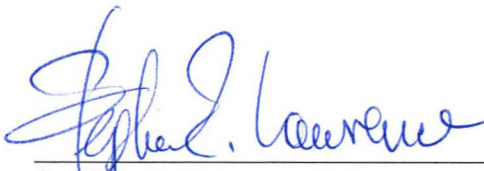
It was moved by McGlothlin and seconded by Brown to direct staff to prepare a letter to GAS notifying them of the denial of protest. The motion carried, Miller absent.

ADJOURNMENT

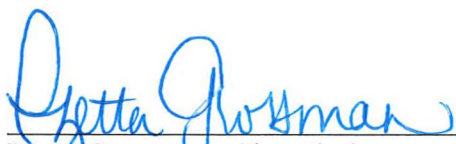
Being no further business, the meeting adjourned at 7:04 p.m.

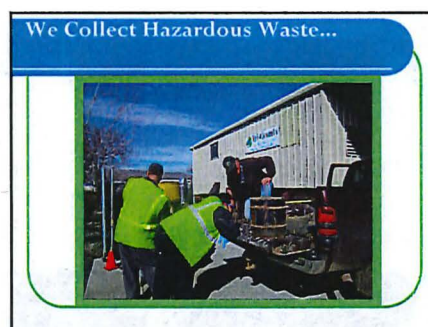
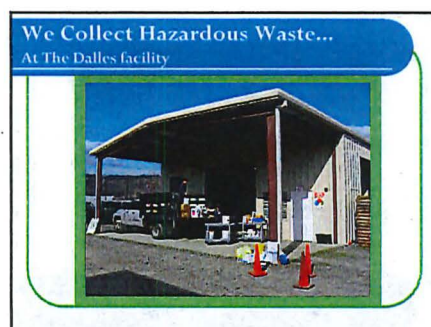
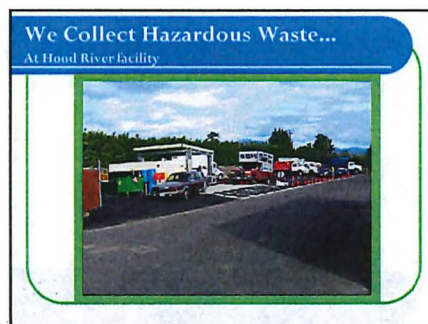
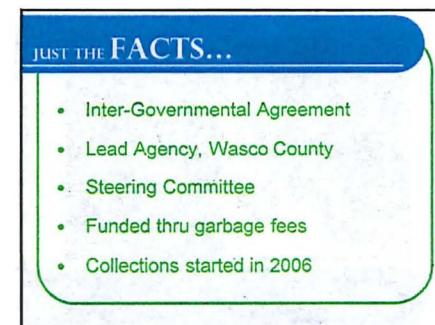
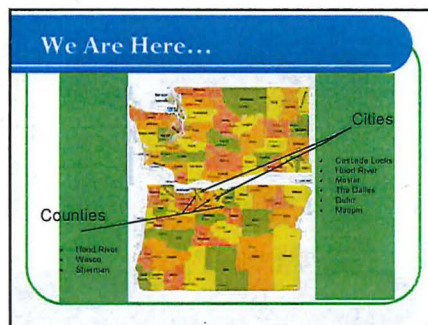
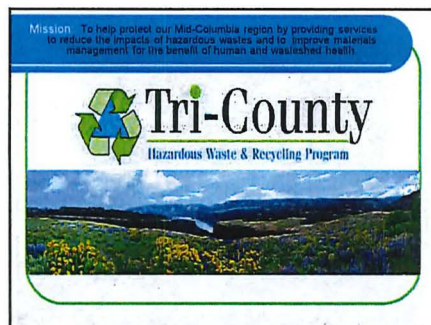
Submitted by/
Izetta Grossman
City Clerk

SIGNED:


Stephen E. Lawrence, Mayor

ATTEST:


Izetta Grossman, City Clerk



We Support Event Recycling... big



New Program-
Abatement and Recycling Assistance



Compost- Schools



Grants



We Sell Compost Bins...



Organic Material



Organic Material... on Fire!



Dirt Hugger



Dirt Hugger



Rural Recycling Depots- **GOOD**

Rural Recycling Depots - **BAD**

Rural Recycling Depots- **UGLY**

We Study Garbage too...

We track 'Product Stewardship'

- ✓ Paint
- ✓ Electronics
- ✓ Beverage Containers
- ✓ **Hazardous Waste**
- ✓ Pharmaceuticals
- ✓ Fluorescent Lamps
- ✓ Batteries
- ✓ Pesticides
- Radioactive Devices
- Tires
- Telephones Books
- Packaging
- Motor Oil
- Carpet
- Medical Sharps
- Mercury Thermostats
- Gas Cylinders
- Mattresses

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What's New?

- Expanded Ballie Hill
- Electronic Waste Recycling
- Universal Recycling
- Cell Phones
- School Lab Clean-out
- Flux Packaging
- Contamination

Reduce Waste + Recycle More

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Memorandum

To: Craig G. Russillo
From: David A. Anderson
Date: October 9, 2017
Subject: The Dalles / GAS: Bid Protest on Confidential Information
File No.: 122304-224114

ISSUE

Gorge Aviation Services, LLC ("GAS") submitted a response to an RFP issued by the Dalles (the "City"). The City reissued its RFP with additional information. GAS contends that the additional information released by the City includes confidential or proprietary information belonging to GAS that the City should not have released. The City asked us to analyze:

1) Whether it had any duty to maintain the confidentiality of submittals by GAS in response to the City's RFP?

Short Answer. No. The City did not release any confidential or proprietary information belonging strictly to GAS. GAS does not allege any agreement with the City to keep submittals confidential.

2) Whether Oregon Public Records Law would require the City to disclose confidential and proprietary information submitted by GAS?

Short Answer. No. ORS 279B.060(5) permits but does not require a public entity to enter an agreement not to produce confidential or proprietary information. Accordingly, the City has discretion whether to disclose that information.

FACTS

By letter dated September 27, 2017, GAS asserts the following facts. Because we conclude that GAS does not have a legally enforceable claim, we state the following facts consistently with GAS's assertions in its letter:

After issuing an RFP, the City issued an Addendum to the RFP which included additional information for prospective bidders to consider. GAS contends that the addendum “uses confidential and proprietary GAS information that is the property of GAS.”

GAS further states that a letter the City sent dated December 3, 2015, “clearly stated that any information provided regarding fuel sales was considered confidential and proprietary to GAS and it was not to be disclosed.”

GAS contends, nonetheless, that the City released two kinds of confidential and proprietary information: (1) “fuel sales records that were provided to [the City] confidentially” and (2) highly confidential information that is only for internal use and has never been provided to [the City] with GAS’s knowledge or consent.”

GAS does not provide a copy of the letter it cites to support its contention that the City promised to hold information confidential. The City does not report that any City ordinance or other act by the City council authorized any such agreement.

GAS does include, in its materials, a letter dated June 29, 2017, from Charles Covert to the City. In this letter, Covert writes that a dispute has arisen between the members of GAS. Covert further writes the other two members had elected to restrict Covert’s rights with respect to management of the LLC.

ANALYSIS

(1) *The City is not bound by any agreement to keep any information confidential.*

Although GAS does not articulate its claim in this way, GAS asserts that the fuel pricing information publicized by the City is a trade secret. A trade secret is confidential information that gives an entity a business advantage. As more specifically stated in ORS 646.461(4) a trade secret is:

[I]nformation, including a drawing, cost data, customer list, formula, pattern, compilation, program, device, method, technique or process that: (a) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

A contract to maintain a trade secret is enforceable. *See Kaib's Roving R.P.H. Agency, Inc. v. Smith*, 237 Or App 96, 103-05 (2010) (analyzing claim for breach of contractual agreement to maintain trade secret). The City could have accordingly bound itself to maintain secrecy of information provided to it by GAS.

However, a city can only enter a binding agreement by resolution of its council. ORS 221.120(6) and (8) state: “The powers of the city shall be vested in the council” and “No action by the council shall have legal effect unless concurred in by a majority of the council.”

Absent any action by the City’s council to enter an agreement to keep certain information confidential, there is no such agreement. Two conclusions logically follow: first, the City is not bound by any agreement to keep GAS’s information confidential; second, even if GAS provided trade secret information to the City, GAS hardly acted reasonably to maintain the secrecy of its alleged trade secret. *See* ORS 646.461(4) (trade secret protection only applies to information that an entity acts reasonably to preserve secrecy).

Two caveats: it appears that GAS had an earlier agreement with the City for substantially similar services. We have not reviewed that agreement. The City may have agreed to maintain confidentiality of certain information supplied by GAS in a prior services contract with GAS. Second, GAS alludes to information that it held highly confidential that inexplicably landed in the City’s hands. In light of the ongoing business dispute among the GAS members, caution suggests that the City ascertain how it got that allegedly highly confidential information. If the City obtained that information because of the wrongdoing of one of the GAS members, our analysis might change.

(2) *The City has discretion whether to disclose confidential information.*

Oregon Public Records Law makes disclosure of public records the rule. *Brown v. Guard Publishing Co.*, 267 Or App 552, 563 (2014). Stated differently, “[e]very person has a right to inspect any public record of a public body in this state, except as otherwise expressly provided by ORS 192.501 to 192.505.” *Id.* In turn, “public record” is defined broadly to mean any writing that “contains information relating to the conduct of the public’s business.” Given that the information at issue was released as part of the City’s RFP addendum, related writings contain information relating to the conduct of the public’s business and are public records.

Because the information at issue is a public record, the rule is disclosure. An exception exists under ORS 192.502(4), which makes certain information not subject to disclosure, including:

Information submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure.

Relatedly, ORS 279B.060(5) allows a public body to withhold from disclosure trade secrets. Thus, a public body has authority to obligate itself to protect trade secret or confidential information. (This makes sense because such an agreement might be necessary from time to time to support a solicitation of services).

However, here, the City has made no such agreement to bind itself to maintain the confidentiality of records from GAS. No action by the City council has bound the City to do so (that we are

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aware of – note the caveats above). Therefore, public records law would require the disclosure of the information that GAS requests be suppressed.

CONCLUSION

The City did not violate any duty to keep records confidential based on the information supplied by GAS. The City did not bind itself to keep the information confidential and, in that event, public records law would require the disclosure of the information at issue should a third party request it.

DAA