

MINUTES

REGULAR COUNCIL MEETING
OF
DECEMBER 14, 2009
5:30 P.M.
WASCO COUNTY COURTHOUSE
THE DALLES, OREGON

PRESIDING: Mayor Nikki Lesich

COUNCIL PRESENT: Bill Dick, Carolyn Wood, Jim Wilcox, Dan Spatz, Brian Ahier

COUNCIL ABSENT: None

STAFF PRESENT: City Manager Nolan Young, City Attorney Gene Parker, City Clerk Julie Krueger, Senior Planner Dick Gassman, Police Chief Jay Waterbury, Administrative Intern Jared Cobb, Engineer Dale McCabe, Community Development Director Dan Durow, Police Captain Ed Goodman

CALL TO ORDER

Mayor Lesich called the meeting to order at 5:32 p.m.

ROLL CALL

Roll call was conducted by City Clerk Krueger; all Councilors present.

PLEDGE OF ALLEGIANCE

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

APPROVAL OF AGENDA

Mayor Lesich asked the City Council to add an item to the Consent Agenda to authorize the City Clerk to endorse an OLCC New Outlet application for Walgreen's. It was moved by Wood and seconded by Wilcox to approve the agenda as amended. The motion carried unanimously.

AUDIENCE PARTICIPATION

Corrine Stewart, Mid Columbia Community Action Council, read a proposed proclamation into the record to declare December 21, 2009 as Homeless Persons' Memorial Day. Mayor Lesich asked the City Clerk to prepare an official proclamation for her signature.

John Nelson, 524 West Third Place, The Dalles, said he had listened to the audio recording of the November 23rd Council meeting and said if the Council wanted to foster an open government and persuade citizens to be more involved, the City Council should make amendments to the Comprehensive Plan to help guide processes. He said more directive language was needed and language should be included to promote small businesses as opposed to large chain stores. He asked the Council not to make judgmental statements about comments received from citizens.

Mr. Nelson asked the City Council to ensure they have full information before making decisions and encouraged the Council to establish a citizen committee to work on Comprehensive Plan amendments.

Councilor Wilcox said he believed the Comprehensive Plan update was in the beginning phases and expected there would be many opportunities for public input.

City Manager Young said the current proposed amendments to the Comprehensive Plan were specific in nature, and said there would be opportunities for public input during the periodic review process.

Steve Kelsey, 3850 Knob Hill Road, The Dalles, said the City should tell the citizens about any specific incentives offered to bring businesses to the community.

CITY MANAGER REPORT

City Manager Young reported on various grants which were in the process of being submitted for projects and said the Administrative Intern position was ending on December 18th.

Young said with some adjustments to access for the upper elevation reservoir project, an amendment to the contract with Kennedy Jenks needed to be approved in the amount of \$147,283 to pay for additional engineering costs.

It was moved by Dick and seconded by Spatz to authorize an amendment to the contract with Kennedy Jenks in the amount of \$147,283 to pay for additional engineering services. The motion carried unanimously.

CITY ATTORNEY REPORT

None.

CITY COUNCIL REPORTS

Councilor Wilcox said the Airport Board would not be meeting in December.

Councilor Spatz thanked Chris Zukin of Meadow Outdoor Advertising for his donation of billboard advertising for the Discovery Center.

CONSENT AGENDA

It was moved by Wilcox and seconded by Wood to approve the Consent Agenda as amended. The motion carried unanimously.

Items approved by Consent Agenda were: 1) approval of November 23, 2009 regular City Council meeting minutes; 2) approval of November 16, 2009 special City Council meeting minutes; 3) approval of November 16, 2009 Town Hall meeting minutes; 4) Resolution No. 09-036 adopting a policy for use of electronic messages and retention of such messages for the City Council; 5) Resolution No. 09-039 concurring with the Mayor's appointment of Dennis Davis to the Historic Landmarks Commission; and 6) authorization for City Clerk to endorse an OLCC New Outlet application for Walgreen's.

PUBLIC HEARINGS

Public Hearing to Receive Testimony Regarding Remand of Approval for Site Plan #379-08 of Pacland for the Construction of a Wal-Mart Store

Mayor Lesich reviewed the procedures to be followed for the public hearing. She asked if any Councilor wished to declare bias, ex parte contact or conflict of interest. Hearing none, she asked if there was anyone in the audience who wished to challenge the qualifications of any of the Councilors. Hearing no challenges, the public hearing was opened.

City Attorney Parker reviewed the staff report. He said the Council had determined that the applicant would be allowed to present new evidence as set forth in their request to proceed with the remand and had determined that interested parties would be allowed to testify regarding any new evidence related to the 30th highest hour volume. Parker said the Council had also

determined it would allow interested parties an opportunity to present testimony and evidence related to the 30th highest hour volume using Saturday as the weekend day for purposes of calculation.

Parker reviewed the scope of issues to be considered, including whether the City's findings were sufficient to explain why traffic counts taken on a weekday satisfied the requirement to measure volumes for traffic and whether additional traffic counts taken on a weekend day would be necessary in order to reach an accurate conclusion regarding the proposed development.

Parker mentioned the memorandum from DKS Associates, saying it contained detailed analysis of additional facts to support the evidence in the record regarding traffic volume and included the process used to be in compliance with Oregon Department of Transportation (ODOT) requirements.

Senior Planner Dick Gassman provided copies of one written testimony received by email (attached as Exhibit "A"), in support of the applicant. Gassman also provided a letter with attachments from Kenneth Helm, 16289 NW Mission Oaks Drive, Beaverton, Oregon, representing the Citizens for Responsible Development in The Dalles (attached as Exhibit "B"). Senior Planner provided a letter from ODOT regarding the additional traffic analysis in response to the LUBA remand (attached as Exhibit "C").

Gassman said staff consulted with experts on issues such as traffic and the applicant had also relied on experts to develop their proposal. He said the information had also been reviewed by ODOT and had been prepared properly. Mr. Gassman provided a memorandum from the City Engineer (attached as Exhibit "D") regarding the City's policy for traffic impact studies.

City Engineer Dale McCabe said the City's policy regarding traffic impact studies included guidelines and that Wasco County and ODOT had also included their requirements before the study was completed. He said the study was developed correctly and appropriately to meet the standards of the City, County, and State.

Applicant Testimony

Greg Hathaway, Davis Wright Tremaine, 1300 SW Fifth Avenue, Suite 200, Portland, Oregon, representing Wal-Mart, testified that the opponents of this application had asserted that the City did not follow the law, but through the Land Use Board of Appeals (LUBA) the City's decision had been upheld with only one issue being remanded for additional findings. He said the issue of the 30th highest hour traffic volume would be addressed by Project Engineer Scott Mansur of DKS Associates.

Mr. Hathaway said the applicant was confident that the measurement was correct, using the Tuesday afternoon data, but to ensure there were no further questions or appeals regarding the information, the applicant had also prepared calculations using Sunday afternoon data as mentioned in the remand. Hathaway said the opponent had argued that Tuesday data was not correct and that Sunday data should be used, so the applicant had prepared additional information based on Sunday counts.

Hathaway reminded the Council that LUBA had not said the City's decision had been unlawful, only that they did not provide adequate findings to support the Tuesday data being used. He said the remand by LUBA had suggested the Sunday data be addressed as requested in the opponent's testimony, but that it was not mandated.

Hathaway testified that the data had been carefully reviewed and it had been concluded that the 30th highest hour of volume was a Tuesday afternoon in July. He said the prior conditions of approval imposed on the application did mitigate any development impact on the Chenoweth Interchanges and that Wal-Mart would make financial assurances so when signalization was warranted, it would be paid for. Hathaway said Sunday traffic counts were taken in October and were seasonally adjusted according to ODOT regulations to develop the new data and it was determined that Tuesday did have a higher traffic impact. Hathaway said at the November 23rd Council meeting, the opponents raised the issue of using Saturday as the 30th highest hour volume. He said the request would be addressed, but that Saturday was not the 30th highest hour.

Scott Mansur, DKS Associates, 1400 SW Fifth Avenue, Portland, Oregon, provided a Power Point presentation (attached as Exhibit "E"), which described analysis and mitigations for the proposed Wal-Mart and additional shopping center area for the transportation impact study. He described ODOT procedures to determine 30th highest hour and a detailed outline of the process used, according to ODOT Procedures Manual, to determine the appropriate 30th highest hour volumes.

Mr. Mansur summarized the presentation by saying the 30th highest hour of Chenoweth Interchange was a weekday p.m. peak hour, that ODOT and the City staff concurred, that no mitigation was required in 2010, and that mitigation measures imposed through the conditions of approval in Resolution No. 09-013 were adequate to mitigate traffic impact through the year 2027.

Mansur testified that the 30th highest hour at Rowena automatic traffic counter (ATR) was not considered the same as the 30th highest hour of Chenoweth Interchange ramp terminals, but that they had conducted additional traffic counts and analyzed traffic impacts based on Sunday data. He said a seasonal adjustment had been included for the Sunday date because the counts had been taken in October; new trip generation estimates corresponded to Sunday peak hour and the

same assumption used for the traffic impact study, such as trip distribution and routing, yearly growth rate and analysis years, had been used for the Sunday analysis. Mansur said these assumptions had been approved by ODOT and the City.

Mansur said the weekday afternoon peak hour traffic volume was 3.5% higher than Sunday peak hour volumes, that operating conditions were worse during the weekday peak hour and that identified mitigations would allow the Chenoweth Interchange to meet operating standards for both Sunday and weekday peak hours.

Regarding Saturday traffic, Mr. Mansur noted the Saturday peak hours in July were 25% lower than the 30th highest hour to measure project impacts. He said because there was no correlation between Saturday and the 30th highest hour, it should not be used in an analysis.

Greg Hathaway said the applicant had been very careful to be responsive and ensure the City Council was comfortable with their decisions. He said the conditions currently imposed on the Site Plan application did mitigate traffic impacts and asked the City Council to adopt the staff recommendation.

Councilor Wilcox asked if the primary difference between the applicant's and opponent's traffic studies was that the opponent's traffic engineer did not follow the ODOT procedures when it came to the determination that the ATR trend was within 10% of the Chenoweth Interchange average daily traffic. He said if that was the major difference, he questioned whether the opponent's analysis performed by Greenlight could be defended.

Proponent's Testimony

Anthony Rizzi, 922 Verdant Street, The Dalles, Oregon, said he was not a traffic expert but had project engineering experience. He urged the City Council to trust their staff to provide them with accurate information and to not allow a minority of citizens stop the project.

Clint Johnson, 1611 Lambert Street, The Dalles, said he believed the intersection could handle the expected traffic, urged the City Council to trust the information provided by staff and the applicant and to support the application.

Mark McCavic, 5277 Cherry Heights Road, The Dalles, speaking on behalf of WM3, urged the City Council to follow the staff recommendation and approve the information submitted by the applicant.

Opponent Testimony

City Attorney Parker reminded the Council that a letter with attachments had been provided at the beginning of the hearing from Mr. Kenneth Helm, representing the Citizens for Responsible Development in The Dalles.

John Nelson, 524 West Third Place, The Dalles, reiterated that a letter in opposition had been submitted from Mr. Helm. He said a petition with at least 49 signatures had also been submitted. He asked that the record be held open for an additional seven days to allow for additional written testimony to be presented.

Senior Planner Gassman said staff had received a petition, but it was unrelated to the issues for this hearing and was not forwarded to the City Council.

Mr. Nelson asked the City Council to read the traffic report from Greenlight, which had been submitted with Mr. Helm's letter and asked them not to accept the DKS analysis without also considering the information provided by Greenlight.

Councilor Ahier asked if Mr. Nelson believed there was more traffic in the area of the interchange on a Sunday, compared to a weekday. Mr. Nelson said he was unable to answer that question because he didn't use the interchange on a regular basis.

Ahier said it was his understanding that the opponent's traffic engineer believed the traffic counts to be higher on a Sunday compared to a weekday. He said the applicant's traffic engineer had provided an analysis for Sunday traffic and had found it was lower than a weekday count. Ahier said he had read the summary provided by Greenlight and the points were not convincing.

Councilor Wilcox said the memorandum from ODOT indicated that DKS had followed correct methods and procedures to make their analysis. He said Greenlight had not appeared to use the correct methodology in their report.

Glenn Hantelman, 405 West 14th Street, The Dalles, expressed concern for public safety, saying incorrect traffic information would lead to increased accidents. He said there would be heavy congestion because of large trucks mixing with public use of the area. Mr. Hantelman said drive times for the area would be increased and asked that the Council not use the 30th highest hour as a standard.

Susan Harris, 1407 East 21st Street, The Dalles, said she was concerned about traffic safety and asked that everyone be treated with dignity.

Terri Coppedge, 307 West Sixth Street, The Dalles, expressed concern regarding pedestrian and bike access.

City Attorney Parker said that issue was not related to the criteria for this hearing. City Manager Young said pedestrian and bike issues had been addressed at a previous hearing.

Steve Kelsey, 3850 Knob Hill Road, The Dalles, said he agreed with the data collected from the Rowena ATR but assumed none of that traffic was currently exiting at the Chenoweth Interchange. He said it was important to consider the future traffic problems. He asked the City Council to take their time in making a decision and urged them to abstain from voting until they had more information.

Eric Gleason, 714 Case Street, The Dalles, said the DKS report appeared to discount use of the Rowena ATR, then use that data in calculations for the Sunday traffic counts. He said it seemed to be inconsistent.

Applicant Rebuttal

Greg Hathaway said City staff, ODOT, the Planning Commission and City Council had all carefully evaluated the information, followed by review by LUBA. He said all other traffic issues had been deemed to be complied with and this remand was only to ask the City to provide additional findings regarding the 30th highest hour calculations. He said to help justify the traffic information, the traffic engineer had performed an additional study based on the opponent's statement that a Sunday afternoon was the 30th highest hour. He said it had been found to have less traffic impact than a Tuesday afternoon hour.

Hathaway said the letter and report submitted by the opponent had been submitted late, but he had been able to read portions of it. Hathaway said the report submitted by the opponent was not credible and that he was disturbed by one sentence in particular which stated that Greenlight had never contended that Sunday or Saturday was the 30th highest hour, but that the Tuesday hour chosen for analysis was not the 30th highest hour. Mr. Hathaway said the report submitted by Greenlight, dated February 6, 2009, page 4, did say that Sunday, July 29, 2007 was the 30th highest hour. He said this was restated in the LUBA opinion on page 10, saying that Greenlight had suggested Sunday should be used as the 30th highest hour.

Mr. Hathaway said the applicant supported keeping the record open to ensure a complete record was established. He asked for an additional seven days and a closing time for rebuttal of written presentations.

Hathaway said the last paragraph of Mr. Helm's letter again asked for consideration of wetlands issues which were not part of the scope of the remand hearing.

Hearing no further testimony, the public hearing was closed.

Council Deliberation

It was moved by Wood and seconded by Dick to keep the record open for seven days to allow for additional written evidence or testimony, as requested by both the opponent and applicant.

City Attorney Parker said the City Council could continue deliberations at the January 11, 2010 meeting, reviewing any written information that was submitted, but no additional testimony would be allowed.

The motion to keep the record open for seven days to allow for additional written evidence or testimony, as requested by both the opponent and applicant carried; Ahier and Wilcox voting no.

Recess

Mayor Lesich called a recess at 7:52 p.m.

Reconvene

The meeting reconvened at 7:58 p.m.

ACTION ITEMS

Resolution No. 09-037 Adopting a Supplemental Budget for Fiscal Year 2009-10, Making Appropriations and Authorizing Expenditures From and Within the General Fund, Sewer Special Reserve Fund, Capital Projects Fund and Special Grants Fund

City Manager Young reviewed the staff report.

It was moved by Wilcox and seconded by Wood to adopt Resolution No. 09-037 adopting a supplemental budget for fiscal year 2009-10, making appropriations and authorizing expenditures from and within the General Fund, Sewer Special Reserve Fund, Capital Projects Fund and Special Grants Fund. The motion carried unanimously.

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Resolution No. 09-038 Authorizing Transfers of Budget Funds Between Departments and Categories of the Sewer Reserve Fund for the Fiscal Year Ending June 30, 2010

City Manager Young reviewed the staff report. It was noted that the word sewer should be changed to water.

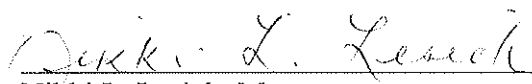
It was moved by Wood and seconded by Spatz to adopt Resolution No. 09-038 authorizing transfers of budget funds between departments and categories of the Water Reserve Fund for the fiscal year ending June 30, 2010, with the word sewer being changed to water. The motion carried unanimously.

ADJOURNMENT

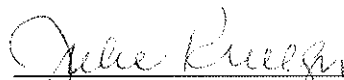
Being no further business, the meeting adjourned at 8:03 p.m.

Submitted by/
Julie Krueger, MMC
City Clerk

SIGNED:


Nikki L. Lesich, Mayor

ATTEST:


Julie Krueger, MMC, City Clerk