



CITY COUNCIL MEETING
March 14, 2012 - 6:30 p.m.
(Santiam Travel Station - 750 3rd Street)

A G E N D A

MEET-N-GREET - 6:30 p.m. to 7 p.m.

Kris Latimer, Executive Director of the Boys & Girls Clubs of the Greater Santiam

CALL TO ORDER / FLAG SALUTE

ROLL CALL

APPROVAL OF CITY COUNCIL MINUTES - Regular Session – February 8, 2012

CONSENT CALENDAR - *The following item(s) are considered routine and will be enacted by one motion. There will not be a separate discussion of these items unless a Councilor so requests. In this case, the item(s) will be removed from the Consent Calendar and considered separately.*

AGENDA: Lebanon City Council Agenda – March 14, 2012

- APPOINTMENTS:**
- a) **Building Board of Appeals** – Rand Kroessin (reappointment)
 - b) **Parks Committee/Tree Board** – Greg Nervino (new appointment)
 - c) **Planning Commission:** Regular Positions – Mike Reineccius & Brian Daniels (reappointments); and Alternate Positions – Brenda Hall & Wayne Kirks (new appointments)

BID ADVERTISEMENT: Rose Street Sanitary Sewer Replacement Project

- BOARD MINUTES:**
- a) Library Advisory Board – January 11, 2012
 - b) Planning Commission – September 21, 2011

PROCLAMATION - Arbor Day Proclamation

ITEMS FROM COUNCIL

CITIZEN COMMENTS – Citizens may address the Council on any matters that do NOT pertain to scheduled Public Hearings or other items already on the agenda. All comments concerning a Public Hearing must be addressed during that agenda item. As for other items listed on the agenda, the Mayor will ask for input in the order they appear on the agenda.

PUBLIC HEARING

1) **Sale of Declared City Surplus Real Property (Railroad Spur/Easement)**

Presented by: Tré Kennedy, City Attorney

Approval/Denial by RESOLUTION NO. 2012-4

REGULAR SESSION

[Temporarily adjourn as the Lebanon City Council and convene as the Lebanon Urban Renewal Agency]

2a) **McKinney Lane Apartments Development Agreement**

Presented by: John Hitt, City Manager

Approval/Denial by MOTION

[Adjourn as the Lebanon Urban Renewal Agency and reconvene as the Lebanon City Council]

2b) **McKinney Lane Apartments Development Agreement**

Presented by: John Hitt, City Manager

Approval/Denial by MOTION

3) **NW URD Project List Update**

Presented by: Dan Grassick, Utility/Engineering Services Manager

Discussion

4) **Oregon Parks & Recreation Local Government Grant (soccer park development)**

Presented by: Dan Grassick, Utility/Engineering Services Manager

Approval/Denial by RESOLUTION NO. 2012-5

5) **Extended Tax Abatement Agreement for Oregon Freeze Dry in Albany, Oregon**

Presented by: John Hitt, City Manager

Approval/Denial by RESOLUTION NO. 2012-6

6) **Amending Lebanon Municipal Code 3.04 Public Contracting**

Presented by: Tré Kennedy, City Attorney

Approval/Denial by ORDINANCE BILL NO. 2012-3, ORDINANCE NO. 2831

7) **Sale of City-Owned Surplus Real Property**

Presented by: John Hitt, City Manager

Approval/Denial by MOTION

8) **City Manager's Report**

Presented by: John Hitt, City Manager

Discussion

ITEMS FROM COUNCIL

CITIZEN COMMENTS - *Another opportunity for citizens to comment on any item of City business.*

ADJOURNMENT



Approval of Minutes

LEBANON CITY COUNCIL
MINUTES
February 8, 2012

Council Present: Mayor Ken Toomb and Councilors Margaret Campbell, Bob Elliott, Floyd Fisher, Ron Miller, Wayne Rieskamp, and Ray Weldon

Staff Present: City Manager John Hitt, Assistant City Manager Ginger Allen, City Attorney Tré Kennedy, Police Chief Mike Schulte, City Clerk Linda Kaser, Community Development Manager Walt Wendolowski, Utilities/Engineering Services Manager Dan Grassick, Senior Engineer Ron Whittlatch, and Senior Engineer Rob Emmons

CALL TO ORDER / FLAG SALUTE / ROLL CALL

Mayor Toomb called the Regular Session of the Lebanon City Council to order at 7:00 p.m. in the Santiam Travel Station Board Room. Roll call was taken with Councilor Campbell being absent [Campbell arrived at 7:10 p.m.].

APPROVAL OF CITY COUNCIL MINUTES

Councilor Elliott moved, Councilor Miller seconded, to approve the January 11, 2012 Regular Session minutes as presented. The motion passed unanimously by roll call vote.

CONSENT CALENDAR

Agenda: Lebanon City Council Agenda – February 8, 2012
Board Minutes: Building Board – January 28, 2012
Library Advisory Board – November 30, 2011
Library-Senior Center Trust – November 14, 2011

Councilor Rieskamp moved, Councilor Elliott seconded, to approve the Consent Calendar as presented. The motion passed unanimously by roll call vote.

ITEMS FROM COUNCIL

Councilor Elliott read a statement, signed by him and dated February 8, 2012, into the record:

I have a statement I would like to read into the record. I have been involved with the City government in the City of Lebanon for the last 16 years, serving on many community committees and the Planning Commission. I am presently serving on my third four-year term as an elected official on the Lebanon City Council, serving as Council President for the last six years. During this time period, with the assistance of John Hitt, Mayor Toomb and the City staff, I have seen the City of Lebanon become a leader in our State. The development of the new Library and Justice Center, acquisition of the Senior Center and its remodel, super Wal-Mart, Lowes distribution center, expansions at Entek, moving of the reload station, Western University of Health Sciences, Samaritan's development, etc – these achievements have further advanced our City, thus advancing our School District, the community job market, business and overall livability for the citizenry. I am very proud to have been a part of these achievements.

This should be a time of prosperity and jubilation, due to the economic development occurring in the City of Lebanon. However, we have a rogue Councilor who is determined to nit-pick and try to unearth any imagined wrongdoing on the part of the City Manager and others. Members of a City Council are viewed by others as leaders within their communities. Leaders must also be team players. It is the Council, as a group, that leads a City. As a general rule, individual City Councilors, acting on their own, have no authority to take actions or make decisions on behalf of a city. In most city charters, the power to take action or make decisions is vested in the City Council as a body. Councilor Weldon keeps referring to his fiduciary duties as a Councilor. Where was his fiduciary duty when the Council was asked to evaluate the City Manager's job performance? Councilor Weldon had the form for the City Manager's evaluation in his hands on November 10, 2011. He chose not to do his fiduciary duty by not participating in this evaluation, but he was able to vote no on the City Manager's yearly contract. In addition, Councilor Weldon voted no on establishing the Urban Renewal District that enabled Western University of Health Sciences to locate in Lebanon. Without this important URD, we would not have this Medical College in Lebanon, and in no way would we have the upcoming Veterans Home in Lebanon.

Councilor Weldon continues to berate the City Manager, City Council, Mayor and the City Attorney, insinuating that everything they do is either illegal or wrong. Time and time again, the City Attorney proves that the actions taken were, in fact, legal. Councilor Weldon's accusations and actions over the last seven years make it clear that he has no interest in representing the City as a whole or working with his fellow elected or appointed officials to improve our great community. Lebanon is a great place to live, work, play and worship. I feel it is my elected duty to protect the citizens from negative resistance, whether stemming from citizens who lack a clear understanding and acknowledgement concerning the forward progress of our local government. In spite of our rogue Councilor's behavior and accusations, I, and I believe my fellow Councilors as a group, will continue to do everything in our power for the betterment of the City of Lebanon.

Mayor Toomb asked Assistant City Manager Allen to read into the record her memorandum to Mayor Toomb and the City Council about allegations concerning employee personnel records.

In the January 11, 2012 edition of the Lebanon Express, a Letter to the Editor written by Mel Harrington stated, "When I was on city council, (Mayor Ken) Toomb threw my evaluation of Mr. Hitt in the wastebasket with the comment that it was unfavorable to John Hitt....."

In addition to the letter in the newspaper, Mr. Harrington personally appeared before Council at the January 11, [2012] Council meeting and made a similar statement.

As the person currently responsible for the oversight of the City's personnel records, I felt it was my duty to research this allegation. I revisited the timeframe in which Mr. Harrington served on the Lebanon City Council. In doing so, I found the following to be true:

- *Mr. Harrington was elected to office in the Fall of 2000. He began his four-year term as a Lebanon City Councilor in January of 2001 and completed his term in December of 2004.*
- *There was only one performance evaluation conducted on Mr. Hitt during Mel Harrington's term as a City Councilor. Attached you will find a copy of a "City Administrator's Performance & Development Evaluation" cover sheet personally signed by Mel Harrington. Mel Harrington's evaluation of Mr. Hitt, along with six other evaluations, was in (and remains in) Mr. Hitt's personnel file.*

The statement that "Mr. Harrington's evaluation of Mr. Hitt was thrown into the wastebasket" is unfounded. In addition, Mr. Harrington's Letter to the Editor implies that Ken Toomb was Mayor at the time of this evaluation. On the contrary, Scott Simpson was Mayor during the first two years of Mr. Harrington's Council term and Mayor at the time of this particular evaluation of Mr. Hitt.

The Mayor and City Councilors who participated in Mr. Hitt's 2002 Employee Evaluation were: Mayor Scott Simpson and Councilors Stan Usinger, Dan Thackaberry, Ken Toomb, Ron Miller, Roger Munk and Mel Harrington.

The evaluation process of 2002 was held in an executive session at the request of Mr. Hitt.

[Councilor Campbell joined the meeting at 7:10 p.m.]

CITIZEN COMMENTS

J. Scott Simpson, 775 W. "D" Street, Lebanon, stated that when he was on the Council, the City did street overlays before they got too bad. He feels that the street in front of his house, now considered a Category 4, needs to be replaced because it was not taken care of in time.

Mr. Simpson also felt that the City will one day get sued for not enforcing the law regarding skateboarders and bicyclists on sidewalks. If a pedestrian gets hurt, he does not want his tax dollars used for something that should have been enforced. He feels that if it is not going to be enforced, the law should be removed.

Mel Harrington, Lebanon, thanked Allen for her research into Hitt's evaluation, but added that he would think she has more important things to do than to go through the archives looking for something that happened in the early 2000s. He stated that his comments regarding Mayor Toomb throwing Hitt's evaluation in the trash are true. He is surprised that a copy was kept and is sure that there are many NA's [Not Available] in it. He reviewed this with Hitt, who agreed with Mr. Harrington that he could not fill much of it out because he does not walk in Hitt's shoes. He stated that he continues to stand by his comments.

Mayor Toomb reiterated that he did not say this. It was not thrown in the trash; he did not even have the authority to do that. Mr. Harrington also stated that it may not have been in the minutes because many of the Council meeting minutes during that time were "washed" to include just the pertinent, important things.

Howard Hurst, 733 Binshadler Street, Lebanon, thanked the City and commended the Streets department for overhauling Milton Street because it was long overdue. He stated that Mr. Simpson's comments are true about some City streets, including Binshadler, which needs to be resurfaced. Giving the Streets department the authority to make good repairs is well worth it.

A problem for City streets and State highways are studded tires, so he would appreciate the City backing the petition to ban them. They have been banned in many States because of street repair costs. People have no reason to be using them, but they are because the law says that they can.

Mr. Hurst also expressed concern about skateboarders in black clothes at night, especially on Milton Street.

REGULAR SESSION

1) Defining City Council Goal D2 – Downtown Revitalization

Community Development Manager Wendolowski presented staff's recommendation for revisions to Goal D2, based on Council comments made at the December 14, 2011 meeting. He stated that this will likely require additional thought as to the City's role and how this goal can best be achieved.

Councilor Miller asked what the best conduit for meeting this goal would be. Wendolowski suggested, at a minimum, meeting with staff to discuss options and financial mechanisms. Staff can then work with the Council on a program to get this accomplished.

Councilor Rieskamp asked if previous funding has dried up and whether there are new avenues to pursue. Wendolowski answered that the City can have a budget, as part of the General Fund. There is also the economic improvement district aspect, which a number of cities have. Another option would be an urban renewal district, which was discussed in the past. By revising this goal, the City opens itself to whatever option may be out there.

Councilor Campbell expressed appreciation for taking her and Councilor Miller's ideas and going forward with this. She gave her firm commitment to supporting this in any way that she can. She feels that Wendolowski's guidance and the planning group will really make this happen.

Campbell felt it would be valuable for Wendolowski and members of the Planning Commission to either make a trip to Leavenworth, Washington or contact them to see how they made their city a major tourist attraction. She offered to help revise any City regulation and current rules that would limit the ability to make downtown revitalization happen.

Councilor Miller moved, Councilor Campbell seconded, to APPROVE THE REVISIONS TO CITY COUNCIL GOAL D2. The motion passed unanimously by roll call vote.

Mayor Toomb temporarily adjourned the regular order of business of the Lebanon City Council and convened as the Lebanon Urban Renewal Agency.

2) NW Urban Renewal District Technical Amendment

Utility/Engineering Services Manager Grassick presented staff's recommendation to adopt the resolutions clarifying the Agency's intent to reimburse capital expenditures for urban renewal projects from the bond proceeds.

Councilor Miller asked whether there is a list of projects, in order of urgency. Hitt announced that a presentation, particularly on NW URD projects and possible amendments to those projects, is scheduled for March or April. Grassick pointed out that the bond amounts will be substantially less than the total project costs of \$11.9 million.

City Attorney Kennedy read the title of **RESOLUTION NO. 2012-2 (acting as the UR Agency)**.

Councilor Elliott moved, Councilor Miller seconded, to approve A RESOLUTION OF THE CITY OF LEBANON URBAN RENEWAL AGENCY, OREGON ADOPTING A STATEMENT OF OFFICIAL INTENT TO REIMBURSE CAPITAL EXPENDITURES FROM THE PROCEEDS OF A BORROWING REASONABLY EXPECTED TO BE ENTERED INTO BY THE AGENCY. The motion passed with 5 yeas and 1 abstention (Campbell).

Mayor Toomb adjourned the regular order of business of the Lebanon Urban Renewal Agency and reconvened as the Lebanon City Council.

3) NW Urban Renewal District Technical Amendment

Kennedy read the title of RESOLUTION NO. 2012-3 (acting as the City Council).

Councilor Rieskamp moved, Councilor Elliott seconded, to approve A RESOLUTION OF THE CITY OF LEBANON, OREGON ADOPTING A STATEMENT OF OFFICIAL INTENT TO REIMBURSE CAPITAL EXPENDITURES FROM THE PROCEEDS OF A BORROWING REASONABLY EXPECTED TO BE ENTERED INTO BY THE CITY. The motion passed with 5 yeas and 1 abstention (Campbell).

4) Approval to Award Contract – 12th Street Waterline Extension (Project 11705)

Senior Engineer Whitlatch requested that Council pass a motion to award the 12th Street Waterline Extension Project contract to M & M Earthworks.

Councilor Campbell asked whether the City has experience working with this contractor and whether they have good references. Whitlatch stated that the City does not typically get references on a simple project like this, but M & M Earthworks is insured up to \$3 million in payment performance bonds. The City has not yet worked with them, but the owners seem competent and have a good plan of attack, so he feels comfortable that they will do fine.

Councilor Rieskamp moved, Councilor Fisher seconded, to AWARD THE 12th STREET WATERLINE EXTENSION PROJECT CONTRACT TO M & M EARTHWORKS FOR \$178,296. The motion passed unanimously by roll call vote.

5) Approval to Enter into an Agreement for GIS Mapping Services

Senior Engineer Emmons asked for Council approval to enter into an Aerial Mapping Services Agreement with 3DiWest for \$81,600 to update the City's GIS system.

He explained for Councilor Campbell what the most responsive bid means. Responding to another question by Councilor Campbell, he stated that the company uses fixed-wing to obtain the data.

Councilor Elliott moved, Councilor Campbell seconded, to APPROVE STAFF ENTERING INTO AN AERIAL MAPPING SERVICES AGREEMENT WITH 3DiWEST for \$81,600. The motion passed unanimously by roll call vote.

6) Proposed Anti-Loitering in Reference to School Property

Kennedy presented a proposed school loitering ordinance, which is a result of a partnership between the School District and the Police Department, to address the problem occurring on a regular basis around Lebanon Schools, specifically the High School. The ordinance attempts to alleviate the problem by creating an anti-loitering area within 400 feet of an entry/exit to a public or private school. The ordinance was made as specific as possible to satisfy constitutional requirements, while protecting children and preserving a learning environment.

Craig Hoene, Lebanon School District, reported on the increase in non-student loitering in the last couple of years around school properties and their main concern of student safety.

Councilor Weldon asked whether this is meant to control students. Mr. Hoene stated that it is not; their students are allowed off-campus, per school policy. They are more concerned about those non-students who distract students in classrooms and who are a negative influence.

Councilor Miller asked how the distance of 400 feet was determined. Kennedy explained that Rob Allen [from the High School] made some measurements around the school and determined that this was the minimum distance for the area that is of most concern. He confirmed for Councilor Miller that 400 feet is also sufficient for the back exit on 7th Street. Councilor Miller felt that the distance should include all sidewalks around school property. Kennedy stated that the Council may approve that type of language. After analyzing ordinances in other States that have been found constitutional, the City would be in a more defensible position if it is limited to an area around an entry or exit. Mr. Hoene reported that their biggest areas of concern include the area near 7th and F Streets, and the sidewalks between the tennis courts and the main school building.

Councilor Miller asked for clarification on the penalty. Kennedy explained that since this is a civil infraction and not a crime, it is only punishable by a fine.

Councilor Miller felt that it would help staff to know specifically when the ordinance is violated. Police Chief Schulte stated that the ordinance would be violated at the point that they disobey the lawful order to leave the zone, but they generally like to operate with some discretion because of different circumstances. Mr. Hoene stated that this will be a useful tool because it will give School Resource Officer Shanks legal grounds to act.

Kennedy read the title of **ORDINANCE BILL NO. 2012-2, ORDINANCE NO. 2830**

Councilor Miller moved, Councilor Campbell seconded, to APPROVE A BILL FOR AN ORDINANCE CREATING CHAPTER 9.28 OF THE LEBANON MUNICIPAL CODE PROHIBITING LOITERING ON OR ABOUT SCHOOL GROUNDS. The motion passed unanimously by roll call vote.

7) Subcommittee Update on Amendments to LMC 3.04 – Public Contracts

Kennedy announced that the Public Contract Review Committee agreed that the administrative authority to enter into contracts should be raised from \$50,000 to \$75,000, which is consistent with the model rules and the majority of Oregon cities. The Subcommittee also unanimously agreed that a definition section should be added to Section 3.04.070.

The Subcommittee generally agreed that the changes previously suggested by Councilor Weldon, with respect to LMC 3.04.070, would unnecessarily restrict the ability of the Administration to manage day-to-day business of the City and would lead to unnecessary micro-management by the City Council.

Kennedy asked for Council direction before preparing the amendments as an ordinance to be voted on.

Councilor Weldon asked whether there is a maximum amount for a personal service contract. Kennedy stated that he believes ORS 279(a) states that it would require Council approval if over \$150,000. Responding to Councilor Weldon's comment, Hitt stated that he does not recall making the statement that he could enter into a personal service contract for any amount over \$150,000, if the funds are available. If he did make the statement, he is retracting it.

Councilor Weldon asked where it shows the maximum amount in the Code. Kennedy explained that the maximum amount is \$150,000, as per State law. The proposed ordinance would give authority up to \$75,000 to do it one way, and then \$75,000 to \$150,000. Regarding Section 3.04.070(E)2, Councilor Weldon remarked that "anticipated" does not mean "actual." Councilor Miller pointed out that "anticipated" is a perfectly reasonable word to use, according to the State. Councilor Weldon remarked that he is not sure he would vote for this, if a set maximum amount is not shown.

Councilor Rieskamp felt that the Subcommittee did an adequate job of reviewing and making the corrections or additions. There was Council consensus that this be brought back to the March Council meeting.

8) City Manager's Report – Hitt gave a brief report on the following:

FY 2012/13 Budget Process and Budget Calendar – Hitt pointed out key dates and noted that there are two Budget Committee openings (Ward I and II). Appointments will be made at the April 11 Council meeting.

Potential Development Agreement – Hitt, Kennedy and other staff have been working on an agreement for a development off of McKinney Lane. If it goes forward, quite a bit of off-site improvements would be required, so the developer has asked that the Cheadle Lake URD co-share the cost. The agency would be paid back from future tax revenues from the project. The developer has not seen the draft agreement but has indicated that they would like to move forward as quickly as possible if they approve the draft. None of the Councilors expressed that they would be unable to attend a special session lunch meeting in about two weeks.

City Streets Budget – Hitt reported that almost all communities are faced with the challenge of maintaining their streets. For most cities and counties, there are much more street maintenance and new street construction needs, than there are dollars to get it done.

There are four sections of the budget that deal with street work and street projects. Assuming that all street funds are spent, the City will have spent the most this year, in the last six years, other than one year a few years ago when the City received stimulus dollars. Hitt stated that he agrees with Mr. Hurst and Mr. Simpson that it is a concern. Staff is currently working on a variety of plans and concepts, including possibly revising one of the URDs, to help provide more funds for street work. It is within the purview of the Budget Committee, and then the City Council, to make additional allocations from the General Fund for street maintenance and construction of new street sections.

Police Chief Recruitment – Allen reported that the formal announcement of the Police Chief recruitment will be sent out next week. There are at least eight community people involved in the *community host team*. City Councilors will also be invited to participate in the process.

ITEMS FROM COUNCIL

Councilor Campbell proposed a resolution that the City Council support combining the 2012 Strawberry Festival Parade with a Welcome Home Iraq Veterans Parade, in recognition of their service to our country and community, since the cost and energy of doing two separate events would probably be more than could be managed.

Councilors Rieskamp and Elliott supported this idea for Lebanon to show their appreciation.

Councilor Campbell felt that a more general invitation through the American Legion and other veterans groups would be more appropriate, than just the local National Guard unit.

Councilor Campbell moved, Councilor Miller seconded, THAT THE LEBANON CITY COUNCIL ENCOURAGE AND SUPPORT THE STRAWBERRY FESTIVAL BOARD AND PARADE ORGANIZING COMMITTEE TO COMBINE THE 2012 STRAWBERRY FESTIVAL PARADE WITH A WELCOME HOME IRAQ VETERANS PARADE IN RECOGNITION OF THEIR SERVICE TO OUR COUNTRY AND COMMUNITY. The motion passed unanimously by roll call vote.

Councilor Fisher asked what it would cost to upgrade the City population signs. Hitt stated that this will be taken care of.

CITIZEN COMMENTS – *There were none.*

ADJOURNMENT / ANNUAL JAIL TOUR/INSPECTION TO FOLLOW

Mayor Toomb reminded the Councilors about the mandatory annual Council inspection of the Municipal Jail facilities immediately following tonight's meeting.

The meeting was adjourned at 8:47 p.m.

[Meeting recorded and transcribed by Linda Kaser & Donna Trippett]

Kenneth I. Toomb, Mayor	<input type="checkbox"/>
Bob Elliott, Council President	<input type="checkbox"/>

ATTEST:

Linda Kaser, City Clerk/Recorder

Consent Calendar

Appointments



MEMORANDUM

Community Development Building Services

To: Mayor Toomb and City Council

Date: March 6, 2012

From: Walt Wendolowski, Community Development Manager

Subject: Appointment to Building Board of Appeals

This is a request for Council to reappointment Rand Kroessin to the Building Board of Appeals.

Title 15 of the Lebanon Municipal Code establishes a Board of Appeals consisting of five members.

This will be Mr. Kroessin's second two-year term.



Administration

City Clerk/Recorder

MEMORANDUM

To: Mayor Toomb and City Council

Date: March 6, 2012

From: Linda Kaser, City Clerk

Subject: Parks Committee/Tree Board Appointment Recommendation

The Parks Committee/Tree Board currently has two vacant positions. The vacancies were advertised which resulted in one application being filed.

The Parks Committee/Tree Board recommends the appointment of Greg Nervino to the Parks Committee/Tree Board.

Mr. Nervino's term would commence March 15, 2012 and end on June 30, 2014. At which time he would be eligible for reappointment.

Note: I will continue to receive applications until the other vacancy has been filled.



MEMORANDUM

Community Development Planning Commission

To: Mayor Toomb and City Council

Date: March 6, 2012

From: Walt Wendolowski, Community Development Manager

Subject: Appointments to Planning Commission

This is a request for Council to appoint two regular members and two alternate members to the Lebanon Planning Commission with terms starting April 1, 2012.

VACANT POSITIONS

The terms of two incumbent Planning Commissioners will expire on March 31, 2012. In addition, there are also two vacant alternate positions.

RECRUITMENT

The Planning Commission Ordinance (LMC Chapter 2.24) requires that the City conduct a recruitment to solicit interested persons to serve on the Commission. This recruitment consisted of press releases to the Lebanon Express, Albany Democrat Herald, and Corvallis Gazette Times, plus a paid display ad in the Lebanon Express.

Applications were due by 5:00 PM on February 13, 2012.

APPLICANTS

Both incumbent Commissioners sought reappointment to their positions, along with two additional applications having been received by the deadline. All applicants met the residency requirements of the Ordinance.

INTERVIEW SELECTION AND RECOMMENDATION TO CITY COUNCIL

The Interview Committee conducted interviews on March 1, and hereby makes the following unanimous recommendation for appointments to the Planning Commission:

1. Incumbent *Mike Reineccius* be appointed to serve a four-year term from April 1, 2012 through March 31, 2016;
2. Incumbent *Brian Daniels* be appointed to serve a four-year term from April 1, 2012 through March 31, 2016;
3. *Brenda Hall* be appointed to serve as an alternate member for a four-year term from April 1, 2012 through March 31, 2016; and
4. *Wayne Kirks* be appointed to serve as an alternate member for a four-year term from April 1, 2012 through March 31, 2016.

Bid Advertisements



MEMORANDUM

Engineering Services

To: Dan Grassick, Manager Utility & Engineering Services

Date: February 28, 2012

From: Ron Whitlatch, Senior Engineer

Subject: APPROVAL TO ADVERTISE PROJECT FOR BIDS
Rose Street Sanitary Sewer Replacement
Project No. 11704

RECOMMENDATION

I recommend that City Council pass a motion authorizing City staff to advertise the Rose Street Sanitary Sewer Replacement Project for bids.

BACKGROUND

In 2006, City Council approved funding for a yearly sanitary sewer replacement program to replace deficient sanitary sewer mainlines and manholes. The sewer mainline chosen to be replaced in 2012 is located on Rose Street between Williams Street and just east of Cleveland Street. This line has multiple failed lateral connections, multiple fractures, and grade issues.

City Crews will also be working on this portion of Rose Street replacing the aged and deficient storm drainage pipe. Upon completion of the sanitary sewer and storm drainage replacement, quotes will be requested from paving contractors to patch the trenches and repave the north half of Rose Street.

The project will include approximately 1,100 lineal feet of sanitary sewer replacement, 30 lateral replacements (from the mainline to the edge of right-of-way), and minor sidewalk, driveway, and curb replacement.

The Engineers Estimate for construction is between \$130,000.00 and \$170,000.00.

Engineering Services

Board Minutes



LEBANON PUBLIC LIBRARY
Advisory Committee Meeting Minutes
January 11, 2012

The Library Advisory Committee meeting was called to order at 5:35 p.m. by Chairperson Garry Browning. Attending were Cathy Benneth, Garry Browning, Sharon Follingstad, Harlan Mastenbrook., Sue Spiker and Library Services Manager Denice Lee. Absent were Margaret Campbell and Kathy Pointer

Minutes of the November 30, 2011 meeting were unanimously approved.

Manager's Report:

Circulation:

December	2011	14,588	YTD	2011	94,992
December	2010	14,302	YTD	2010	92,741

Recruitment:

The library has filled two positions that opened when Lynn Bevill and Sheri Miller left the library. Rachel Correll and Julie Tibbetts were hired in December and had two weeks of training. They are gradually assuming the responsibilities of their respective positions. Julie Tibbetts will be the children's librarian for grade school children; Rachel Correll will take over management of our Plinkit website and begin developing computer training curriculum to offer the public.

Programming events:

On January 3rd, the Library Services Manager did a tour of the library for a Cub Scout Troop. After touring the library, the Troop was given instructions on how to find historical information and information about how people lived in the past.

On January 11th, Ari and Mia will be presenting the first musical concert to be held in the new library. Ari and Mia are a sister duo who present folk music, original compositions and music in the Appalachian style.

On January 13th at 11 a.m. the library will host the second Baby Shower event for parents of new babies. There will be refreshments, games, and a free board book to the first 20 families. We want to present library services to the parents and give them information about early literacy and its importance in the lives of the very young.

On February 10, at 7 p.m. the library will host Anne-Louise Sterry as our presenter for the winter Fireside Stories event. Anne-Louise does music and storytelling in her presentations.

Middle School Book Club:

Staff has recruited leaders for the months of January and February, but is still in the process of getting responses for a leader for the month of March. This annual event is held weekly during the months of January, February and March. Leaders select a title for 6th, 7th, and 8th graders to read, discuss and do related activities. For January the title is Tiger by Jeff Stone; February is When You Reach Me by Rebecca Stead. The title for March is yet to be selected. Each student receives a free copy of the book. Funding for the program is provided by the Friends of the Library.

Programming Preparations: Staff is very involved in the planning of programming for Spring Break (March 26-30) and the Summer Reading Program (June 20 – August 1).

Trust Management Grant Application: Library staff is in the process of researching and preparing to submit a grant application for up to \$10,000. Obviously, our most pressing need is to supplement the book budget. Staff is looking at “classics” from all collections to make sure the library’s collection of classics is up to date and complete for books and audio visual materials.

Friends Report:

Harlan reported that the Friends of the Library are averaging a monthly profit of approximately \$700 between the ongoing sale at the Senior Center, online sales and the monthly sales.

Unfinished Business:

The Committee continued reviewing the Library’s Policy Manual to make necessary changes and updates. The Committee worked through pages 33 to 42 making the following changes:

- Page 35, REQUESTS FOR PURCHASE: The following will be deleted: Patrons are encouraged to submit reviews (or sources of reviews) along with author/title/publisher information for each item requested. The library staff will evaluate the requested title using one or more of the following methods:
 - A) Review from a standard or specialized review source.
 - B) Examination copy provided by the patron or a Lebanon book store.
 - C) Examination copy obtained through interlibrary loan.
 - D) Examination copy obtained through “approval” ordering from the publisher.Also deleted will be “and obtaining examination copies”
- Page 36 - 40, SELECTION OF MATERIALS: Each occurrence of the name “Library Advisory Board” will be changed to “Library Advisory Committee”; each occurrence of the name “Program Manager” will be changed to “Library Services Manager”.

Cathy Benneth made a motion to approve the preceding changes to the Policy Manual. The motion was seconded by Harlan Mastenbrook. The motion passed unanimously.

Adjournment:

The meeting was adjourned at 6:30 p.m.

Next Meeting:
Wednesday, January 11, 2012 @ 5:30 p.m.
Lebanon Public Library
Community Meeting Room



City of Lebanon
Planning Commission
Meeting Minutes

Members Present: Commissioners Brian Daniels, Deborah Harris, Walt Rebmann, Mike Reineccius, Don Robertson, Jeremy Salvage and Barry Scott

Staff Present: Community Development Manager Walt Wendolowski, City Attorney John Tré Kennedy, Manager of Utility and Engineering Services Dan Grassick and Executive Assistant Jamie Bilyeu

1. FLAG SALUTE / CALL TO ORDER

Chairman Robertson called the meeting of the Lebanon Planning Commission to order at 6:32 p.m. in the Santiam Travel Station Board Room at 750 3rd Street.

2. ROLL CALL

Roll call was taken; Commissioner Brown was absent.

3. APPROVAL OF MEETING MINUTES

The May 25, 2011 Meeting minutes were approved as presented.

4. CITIZEN COMMENTS – There were none.

5. PUBLIC HEARINGS – There were none.

6. WORK SESSIONS

A. Tree Ordinance Proposal

Per the May 25 [2011] meeting request to consider tree preservation regulations, Community Development Manager Wendolowski reviewed current Development Code requirements, the language submitted during the May meeting, and possible alternatives for the Commission to consider.

Staff reviewed the existing tree regulations, focusing on tree preservation and removal. Applicable Code provisions are summarized:

1. Chapter 16.03 (Land Use) – The City may require site plans to identify significant trees; defines significant trees and the City may require an arborist report. The definition is not clear so staff uses Section 16.15.020.B.2: trees are measured at 4.5 feet above grade with a minimum 12-inch caliper for deciduous trees and a minimum 18-inch caliper for evergreens. Trees falling below these minimums are not considered significant and are not subject to Code provisions.
2. Chapter 16.05 (Residential Zones) – Provisions identify trees as an optional open space amenity to meet multi-family development standards.

3. Chapter 16.11 (Overlay Zones) – Provisions include protection/removal measures for aircraft safety and avoid soil erosion in riparian areas and on steep slopes. City staff has authority to review tree removal and/or plantings.
4. Chapter 16.12 (Transportation Access) – The City may modify street improvement standards to preserve trees and natural features, and provisions allow the use of trees to buffer and/or separate internal pedestrian connections.
5. Chapter 16.15 (Landscaping) – The Chapter defines significant trees and mapping requirements (when so required). Maintenance of significant trees (and other vegetation) is encouraged, where practical, recognizing factors such as maintaining, or the installation of new, public facilities may prohibit retention. Identified significant trees must be protected during construction. Exemptions allowed to diseased or hazardous trees, non-significant trees or non-native vegetation. Landscaped parking islands may include trees and alternative screening methods may be chosen or modified.
6. Chapter 16.17 (Wireless Communication) – Provisions prohibit attaching wireless communication devices to trees.
7. Chapter 16.18 (Signs) – Code prohibits the attachment of signs to trees.
8. Chapter 16.21 (Conditional Uses) – The City may require a site plan to identify significant trees and may require a supporting arborist report. Approval conditions may require the preservation of significant trees and natural features.
9. Chapter 16.22 (Land Divisions) – Preliminary plans identify existing significant trees, provide information on street trees, and require staff review of any proposed screening.
10. Chapter 16.29 (Variances) – Provisions allow the City to approve an Adjustment as a means to reduce impacts on significant trees.

Overall, the Code prefers retention of significant trees, but recognizes their removal may be necessary due to hazards, disease or avoiding interference with required public facilities improvements and airport operations. However, the presence of significant trees can support alteration of street improvements and setbacks. There are severe restrictions on tree removal within riparian and steep-sloped areas. Also, the Development Code is flexible in the review process as language appears to be more of a guideline than a requirement (note use of the word “may” instead of “shall”).

Exhibit A of staff’s report includes the proposed tree ordinance and is based on the City of Pasadena’s tree regulations. The language and structure would require additional editing for clarity. In preparing the material for the Commission, staff made some minor changes. Sections on violations and “grandfathered” activities were eliminated (covered in current Code), and individual sections were “lettered” to help with referencing.

- (A) Purpose – This introduces the reader to the regulations. While a stand-alone ordinance, the material may be incorporated into the current Code.
- (B) Public, Private and Commercial Landmark, Specimen and Native Trees – This Section provides applicable definitions. Please note that staff made an additional structural change, in that language in Item #1 was separated from Item #2. These definitions are generally self-explanatory. One assumes that the regulations address all trees regardless of ownership, but that requires clarification. Caliper size is significantly smaller than the City’s Code.

- (C) Public, Commercial and Private Sector Trees – This Section prohibits any pruning, removal, cutting, etc., of a tree without prior approval. Removal requires approval by the City arborist with decision based on tree health, street and general plan compliance, and urban design enhancement. Regulations strictly prohibit removal of trees older than 10 years or having a caliper exceeding 6 inches. The arborist notifies adjacent neighbors if removal involves one or two trees. Removal of more than two trees requires notification of the City Council, Design Commission, and neighborhood association. Finally, all trees removed require replacement with an equal number of trees within three months.
- (D) Native and Specimen Tree Protection Areas – This Section requires preservation of trees in established front yards and required side/rear yards. If any portion of the tree is located in the yard, then the entire tree is protected.
- (E) Landmark Tree Protection Areas – This Section protects all landmark trees regardless of zoning or ownership.
- (F) Landmark Tree Designation Process – As defined: the Cultural Heritage Commission reviews nominations and makes a recommendation to the City arborist. Final determination requires the arborist's approval. The property owner may object to the designation, although appeal provisions are not clear.
- (G) Further Protection – With the commercial zones, setbacks may be altered to preserve landmark and other significant trees. To allow building expansion, public trees less than 10 years or less than a 6-inch diameter may be removed, subject to City arborist approval. However, this Section also requires effective replacement of the tree canopy within three months of completing construction.
- (H) Tree Protection Guidelines – The Council must adopt a resolution establishing tree protection guidelines, standards and specifications. Plans must be submitted and approved prior to construction activity, with inspections before, during and after construction.
- (I) Landmark, Native and Specimen Tree Removal – This Section prohibits the removal of landmark, native and specimen trees unless: (1) there is a public (not individual) benefit, or a public health, safety or welfare benefit that outweighs protection; (2) the tree may not survive; or, (3) there is a feature that makes the tree unsuitable for protection. Removal requires replacement of the tree canopy within three months. "Tree relocation" is subject to these provisions.
- (J) Pruning – Pruning non-protected trees, specimen trees or native trees is allowed on private property but a permit is required to prune a landmark tree.
- (K) Exemptions to Permits – Permits are not required to remove a protected tree if: (1) the City arborist or a police officer deem it hazardous; (2) pruning or trimming to maintain electrical lines; or, (3) the work is conducted by city employees for public health, safety or welfare as approved by the City arborist.

Staff has some general observations regarding the proposed ordinance:

1. The permit requirements are not clearly spelled out. Normally, code language contains application material and evidence requirements. This would need to be added to any proposed ordinance.
2. Decision criteria are not established. Oregon planning encourages clear and objective standards while the proposal is quite subjective.

3. The City arborist has significant discretion. Any possible discretion by a decision maker requires the right of appeal.
4. In a similar vein, appeal rights are mentioned but not clearly spelled out. This would need to be incorporated in any tree ordinance.
5. Administrative costs are a factor. The extent and reach of the regulations would require a part-time arborist or funding for an "on-call" consultant.
6. The ordinance prohibits the removal of any tree older than 10 years or exceeding a caliper of 6 inches. The Commission may wish to consider whether an outright prohibition of removal for these trees is acceptable.

The purpose of this memorandum was to review the Code's tree preservation provisions and introduce proposed language. Staff sees the following options:

1. Simply make no changes, effectively accepting that current regulations meet the needs of the community.
2. If current regulations are inadequate, the Commission can consider adopting new regulations. The proposed tree ordinance can become the starting point for any revisions.
3. Commission/staff have generally been flexible on landscaping. One option for the Commission to consider is a more proactive approach to tree preservation. While this would not alter the requirements, the "interpretation" would encourage greater retention and/or plantings. All staff recommendations and decisions can incorporate this direction.

While the aesthetic benefits of a tree ordinance are appreciated, staff's immediate concern rests with the time and costs associated with enforcement. Even with volunteers, the City assumes a certain liability and these costs – real or potential – cannot be ignored. The Commission will need to weigh whether there is an urgent need for these restrictions and whether the actual or perceived benefits of such an ordinance outweigh costs.

This is a work session for discussion purposes only. Any changes to the Development Code will require at least an additional work session, as well as hearings before the Planning Commission and City Council. Staff will proceed based on the Commission's direction.

Commissioner Rebmann asked how this will affect Ridgeway Butte. Wendolowski indicated that this is covered, for the most part, under the restrictive steep slope overlay zone. It was incorporated in the land use decision. Tree removal was required for the overall plan. As the individual lots developed, they had to come up with a tree removal plan. They were also facing an interesting situation with the urban forest interface where they had to maintain the ground cover, while avoiding creating a fire hazard.

Wendolowski confirmed for Commissioner Salvage that he assumes that when private trees are mentioned in Exhibit A, Part C, this refers to trees on people's own property. There were some holes in this particular ordinance, so clarification would be necessary for certain points. Commissioner Salvage asked whether the overall context is that all trees are protected, whether it be in your backyard or on the street. Wendolowski stated that this is his interpretation of that section.

Commissioner Harris commented that people complain that Albany's tree ordinance is too restrictive. She loves trees, but she feels that many trees would fall under these restrictions. Wendolowski felt that this is something that the Commission should discuss.

Commissioner Scott stated that there was a perceived need for a change of some sort. He suggested stating some of the obvious questions. What has been and is Lebanon's status of this issue? What are the needs? Why are there needs? What is the perceived issue with trees? Wendolowski stated that there were not many regulations in the old zoning ordinance. He has never perceived this to be an issue for the community as a whole. However, there is much more information about tree preservation in the new Development Code. The word "may" was also used a lot recognizing that there are circumstances that may prohibit preservation of significant trees. The City's current regulations do not look at any and all trees as being preservable; it simply says that there are significant trees that should be preserved. There are other trees, non-native vegetation, or dead/dying trees that should not be preserved. He has seen a movement from no regulations to at least some concept of review during the site planing process through the administration of our Code. Commissioner Scott asked to hear more about the underlying thought or rationale.

Commissioner Harris felt that most people would be open to having a tree plan, but she would like it to be more significant trees (large, older or rare) than a wide range of trees. Wendolowski indicated that this ordinance identifies those landmark trees, which are those that have a certain importance (historical context within the community or just landmarks). He asked whether the City should force or push development in an area that says trees should be saved at all costs or whether there are opportunities to replace the canopy. It also boils down to whether cutting one and planting three is a suitable trade-off, even though it takes a long time before those trees mature.

When it comes to land use, Commissioner Scott stated that possible public taking without compensation should be discussed as well. When you impact a use because of some feature like that of private property, is there a compelling public good served? This should be pretty well understood. Wendolowski reiterated that one of his summary comments is that the Commission should weigh whether there is an urgent need for these restrictions and whether the actual or perceived benefits of such an ordinance outweigh costs. He is always nervous about regulations when there is no staffing to enforce them. Commissioner Scott remarked that he was also speaking about the cost to the community that will not be seen.

Chairman Robertson suggested hearing public comments.

Angelica Rose, Weldwood Drive, Lebanon, expressed that trees are living things, just as animals are. She was upset when she saw people abusing trees unnecessarily, so she decided to become a leader, which requires courage, taking of risks, and a shifting of mentality. She feels that things will get worse, if there is no education. As adult role models, we should be educating people, especially children, that any form of abuse; whether it is an animal, human being or tree; is not appropriate. We should also be teaching people that trees have benefits and without them, we would not be alive. They provide oxygen, prevent flooding, and are aesthetically pleasing. People with children would do anything in their power to make sure their child was protected. She loves trees and is doing everything she can to protect trees from getting hurt because they cannot speak for themselves and because she knows the benefits of them. It has also been proven that there is more pollution and anger with trees being cut down.

Protecting trees requires courage. She believes Lebanon has the potential to do something different and to become a true leader. It does require staff, but it does not have to require cost. The cost to cut down a tree unnecessarily and to put up a building without being educated by an arborist is a lot more expensive. Trees come from God and should be considered before the building. She wants to educate people to not take advantage of the trees because they are living things. She hopes everyone understands the importance of having these trees preserved and taking the risk and time to do something about it. In the long run, it will save money to have an arborist on board. The cost could be spread among other cities and could be a consultant who comes in when needed.

Commissioner Scott expressed appreciation and commended Ms. Rose for taking a public stand for what she believes in. He stated that whether he agrees or disagrees is not so much the issue, as much as this sounds more philosophical than a public policy question. The Commission is tasked to recommend, to the community, policies based on a rationale that they can agree on. In response to Ms. Rose's question, he stated that he does not believe that a tree saves lives, but he does believe that trees generally provide a lot of benefits. He feels that it would probably not impact the amount of oxygen we have in town. This Commission is probably not the right forum for such a philosophical conversation.

Some of the immediate public policy issues that come to his mind are: Is there a general community rationale for having a policy of any sort? What are the parameters and other areas of community life that are impacted by this and how do we weigh them? We cannot review any policy in a vacuum. If we look at the history of the City, as a community, is there a significant deficit in Lebanon's attention to trees? Speaking of a deficit of historic trees, he is not aware of any trees that would fall in this category in our particular community. If we make a strict preservation policy as part of our Code, there would be a significant amount of community push-back on certain development issues. The question of "on what grounds do we say no?" would arise.

Ms. Rose reported that the benefits of trees have been proven by a number of certified arborists. This is what she means when she says that the average person may not see the benefits. Cities are now replanting trees because they realized that pollution has gotten worse and it has been proven that pollution has decreased since the trees were planted. She also reiterated that trees help to prevent flooding.

Commissioner Scott felt that the City's existing Codes are perfectly adequate to those kinds of issues. With respect to the environment, Lebanon is a pretty small percentage of the Willamette Valley, so he does not see this as a significant issue for our community at the moment. Ms. Rose stated that this will change the State of Oregon. Lebanon can become a leader, like Portland, by approving a stricter ordinance to prevent greed and unnecessary cutting. We, as adults, need to be responsible about how we look at trees and how we take them for granted.

Chairman Robertson asked Ms. Rose if she feels that there is an uncontrolled abuse of trees in Lebanon. Ms. Rose stated that she does feel this way because she saw a child pulling out a plant and heard a nonchalant comment about using a tree for firewood and just replacing it with another one. Comments to her article that trees have no importance show that there is a lack of education on some level in Lebanon. Commissioner Scott's comment that he is not aware concerns her that there are people who are not aware of the benefits of trees. She honestly feels that Lebanon, in many ways, has a progressive mentality. The only concern is that the City is letting money stand in the way when it can be resolved very easily. We should be responsible to educate the public a little better.

Chairman Robertson asked whether the only way to educate is by using restrictions. Ms. Rose stated that we are using the word restriction as, in her heart, a form of educating. Once enough people get educated and realize the importance, then they will be mature enough to make smarter decisions about unnecessary cutting. There is not enough education, so we are using this form of education through the City. She realizes that not everyone loves trees as much as she does, but she is going to do whatever it takes to educate as best as she can. Others may call it philosophical, but she calls it taking responsibility for doing her share.

Commissioner Scott stated that he would back Ms. Rose in all of the education she wants, but he asked whether the Commission should impose it upon the community. Ms. Rose stated that all she is saying is that if an arborist is brought on board to educate, it would solve so many problems and would not be a restriction.

Chairman Robertson stated that all further discussion would be amongst the Commissioners and staff.

Wendolowski stated that since the Parks Commission and Tree Board look at these broader policy and philosophical issues regarding trees, they could provide a direct conduit to the City Council, in terms of making recommendations. The Planning Commission's decision can be discussed with the Tree Board. If education is the key component, this Board would be an outstanding place for educational efforts.

Chairman Robertson commented that there was no tree ordinance before the Code was updated. During the updating process, there was extensive research and many discussions because there were some who were philosophically opposed to any kind of restrictions. He feels that the ordinance is a good balance for those who wanted total preservation and those who did not. A lot of flexibility was built in and the word "may" was included because every case is different. The committee really labored to come up with an ordinance that met the needs of the town without taking rights away from the property owners.

Commissioner Scott stated that he is inclined to communicate to the City Council that the Commission has looked at this and would like to reaffirm the City's current policies, which are sound and well-balanced.

Commissioner Daniels remarked that he would hate to see a new burden put on property owners.

Chairman Robertson agreed with Ms. Rose that there is room for more education, but he is not convinced that placing restrictions on property owners is the way to do that. Commissioner Scott said that he is not sure that it is appropriate for the City to take the power vested in them and decide what the public needs to be educated about. Wendolowski reiterated that this is why the Tree Board may be beneficial.

It was the Commission's consensus that the City's current regulations meet the needs of the community.

Wendolowski asked whether the Commission feels that it is an appropriate approach that staff pay a little more attention to trees or whether the Commission feels that the Code is adequate as it stands. Commissioner Scott stated that it is common for trees to be considered during a development, so he does not see the need for more attention. Wendolowski commented that the Commission has a starting point if the issue comes up again.

Chairman Robertson confirmed for Ms. Rose that the Commission's consensus is that the current ordinance is adequate. Ms. Rose stated that she is not discounting what the City is doing, but she asked for more education regarding unnecessary cutting. Commissioner Scott stated that he does not feel that it is the Commission's role to use public resources to forward personal beliefs. He suggested that she educate the public in ways available to her.

Chairman Robertson stated that there are elements in Lebanon, as well as other parts of Oregon, that dictate how trees are handled. There have been a number of times where trees, which should have been removed, fell because of heavy rains or windstorms. Ms. Rose agreed with his comment that there are two sides to education – when trees should remain and when they should be removed. He feels that restrictions would not take those factors into consideration. The Parks and Tree Board may be a good route to take because they can also make recommendations.

Ms. Rose thanked the Commission for listening and for doing what they can to preserve as much as possible. She hopes that they will become a little more conscious about this issue. Commissioner Salvage stated that he believes that those people who want to be on the Planning Commission, and who want to have a say in what the community does, place a pretty high value

on trees and parks areas. When a developer presents a plan, he does look at the landscaping. Looking at current regulations, she should be able to see that this is emphasized in Lebanon. Ms. Rose stated that she is blessed to be a part of this community. She agreed that education may be the solution since no one likes to be told what to do.

B. Wind-Energy System

Wendolowski reported that we are witnessing a significant increase in the use of large-scale wind turbines to generate additional power. These systems are now available for single-family residences for under \$1,500. "Home" turbines generate power that is transmitted through the local power grid. Some systems have power storage batteries, while other systems are hybrids generating grid power and storing energy.

A residential wind turbine system in a rural area may not generate significant impact. However, their placement in urban areas presents some potential issues. The purpose of this work session is to review possible language for small-scale wind energy systems.

Proposed language is in attached Exhibit A (Lincoln City). The language has three parts: general standards for all systems, specific standards for free-standing systems, and specific standards for roof-mounted systems.

16.19.120 WIND ENERGY SYSTEMS

1. Accessory Use

A small wind energy system is allowed as an accessory use in all zones in which structures are permitted. Allows systems in practically all zones, with possible exception to the Airport Overlay Zones or Riparian Protection Overlay Zone.

2. General Standards

- a) Separation. The minimum distance between the ground and any part of a rotor blade must be at least 20 feet. This provides a reasonably safe separation from rotating blades.
- b) Advertising Prohibited. Small wind energy systems may not be illuminated, nor contain signs or advertising. This is to avoid turning the wind energy system into an advertising sign.
- c) Design Requirements. Small wind energy systems must have automatic braking, governing, or feathering system to prevent uncontrolled rotation, overspeeding, and excessive pressure on the support structure, rotor blades, and turbine components. Safety issue as during power outages spinning turbines may be transmitting power through the grid.
- d) Wiring. All wiring serving small wind energy systems must be underground. This avoids unsafe situations with exposed wires.
- e) Noise. Noise produced by small wind energy systems shall comply with applicable noise regulations in the Lebanon Municipal Code. Residential areas, standards are 50db from 7:00 a.m. - 10:00 p.m. and 45db from 10:00 p.m. - 7:00 a.m.; slightly higher for commercial/industrial properties.
- f) Height. The height may not be more than 10 feet over the maximum allowed height for a structure in the underlying zone. Height shall be measured to the top

of the housing enclosing the generating components and shall not include the vertical extension of the blades. This provision conforms to regulations in Section 16.19.080 allowing a 10-foot height increase for “non-habitable” parts of a structure. It is important to note efficiency and power increase with tower height as taller structures can take advantage of undisturbed air available at higher elevations. This height limitation may affect the efficiency of the system, but the City must balance that with aesthetic concerns as well.

- g) Finish of Improvements. A finish (paint/surface) must be provided for the small wind energy system that reduces the visibility of the facility, including the rotors. This condition may be satisfied by painting the support structure and rotors with flat light gray paint. If the support structure is unpainted it must be of a single color throughout its height. The owner must maintain the finish, painted or unpainted, so that no discoloration is allowed to occur. This is similar to the advertising limitation but also addresses potential aesthetic concerns.
- h) Rotor Diameter. The diameter of the area swept by the rotors may not exceed 25 feet. Generally, this would allow an 11- or 12-foot blade. Staff has not found a particular justification for this (or other) sizes.

3. Freestanding Systems – Additional Standards

Small wind energy systems may be mounted on a tower detached from other structures on the lot. In addition, these regulations apply to free-standing units.

- a) Setback. The minimum setback from any property line, overhead utility line, or public right-of-way shall be a distance equal to the vertical distance from the ground to the tip of a wind generator blade when the tip is at its highest point. In addition to the system's structures, guy wires associated with towers shall meet applicable setbacks for the zone district. This recognizes the height of the blades may exceed the maximum allowable height in the zone. To compensate, the setback to be equal to the vertical distance to the highest point of the blade.
- b) Security. Support structures for freestanding systems must be unclimbable from the ground to a height of at least 15 feet. This is a safety issue.
- c) Number. A maximum of one freestanding small wind generator system may be allowed on a parcel of one acre or less. One additional freestanding system is allowed for each one-half acre of lot area above one acre. The limitation is designed to avoid creation of a “wind-farm”. The Commission may also wish to consider higher area thresholds (e.g., two acres) or limit free-standing systems to one per parcel.

4. Roof-Mounted Systems – Additional Standards

Small wind energy systems may be mounted on the roof of a structure as an appurtenance and subject to the following:

- a) Number. Only one roof-mounted system is permitted. This does not prohibit placing a roof-mounted free-standing system(s).
- b) Engineering Report. Before any roof-mounted system is mounted, the property owner must submit a report prepared by an Oregon licensed professional engineer attesting to the fact that the structure to which the system will be mounted is, or will be, sufficiently strong to support the system and to withstand

the wind, vibratory, and other loads to which it would be subjected as a result of mounting the system on it. This report is subject to approval by the Building Official prior to the mounting of the system. This is a safety issue to ensure structural integrity of the roof to support a wind-energy system.

Wendolowski pointed out that no one has come to the City requesting to put in a wind turbine system. This is a work session for discussion purposes only. Any changes to the Development Code will require at least an additional work session as well as hearings before the Planning Commission and City Council. Staff will proceed based on the Commission's direction.

Wendolowski confirmed for Commissioner Reineccius that Lebanon's ordinances cover solar panels. They are allowed, with a building permit, to be flat on the roof. Provisions ensure that new structures will not interfere with solar access.

Manager of Utility and Engineering Services Grassick indicated that Lebanon does not have sufficient average **steady wind speed** to install wind-generating equipment, but he is concerned that someone may put in a system without doing the research even if it does not pay for itself. Therefore, it may be prudent to go forward with this.

Commissioner Scott asked if the building Codes are general enough without specifying wind systems. Grassick stated that the Code for rooftop solar panel installation requires a structural analysis by a certified engineer, but it does not include anything about aesthetics. Wendolowski pointed out that Item D2 states that a roof needs to be sound enough to meet vibration, wind load, etc. if a system is going to be installed on a roof.

Wendolowski confirmed for Commissioner Harris that there would not be a lot of administrative cost to have these requirements. By imposing greater setbacks, many of the small lots would not be able to have a free-standing structure. Also, much of the air flow would be broken up by trees and other buildings. He agreed with Grassick that this is not really viable.

Chairman Robertson asked whether the Commission feels that there is a need to go further with any type of ordinance language. Commissioner Scott agreed with Commissioner Daniels that if it looks as though it may become an issue, then something can be adopted. Wendolowski noted that if someone comes in with a request, he has the authority to bring it to the Commission for interpretation.

Chairman Robertson remarked that even though there is a vendor in town, he would be surprised if someone spent that much money when there is no steady wind source in Lebanon.

Commissioner Harris felt that it would do no harm to adopt the ordinance.

Chairman Robertson stated that he can just imagine the comments about a wind turbine because he remembers the negative testimony about the cell phone tower near Dr. Shafer's office. He questioned whether this would even be acceptable to citizens.

In response to Commissioner Scott's question, Wendolowski stated that the cell tower height limitation is 25 feet in the RL zone, 40 feet in the RM zone, higher in the commercial zones, and no limit in the industrial zone. Commissioner Scott felt that there presently is a sensible cap. There was a brief discussion about the practical aspect of installing a roof system. Based on Grassick's comment that systems can also be bought at a five-foot diameter size, Commissioner Rebmann changed his viewpoint because this could be put on a roof inside of City limits.

Chairman Robertson asked whether this could just be incorporated into the Codes that deal with cell and radio towers. Wendolowski stated that it probably could not because cell towers are also regulated by the FCC, whose requirements are more stringent than Oregon's land use requirements. This is a situation where there is more flexibility at the local level.

Commissioners Harris and Salvage indicated that they do not see any harm in adopting the ordinance, in case this situation comes up. Commissioner Rebmann stated that he is firmly opposed to more restrictions. Commissioner Scott agreed with Commissioner Rebmann and stated that he does not believe this will be a big issue. He would feel better solving a problem, instead of trying to anticipate all problems. Commissioner Reineccius and Daniels believed that Lebanon will see this someday so staff should be pro-active. Chairman Robertson stated that he agrees with being pro-active and has no objection to the ordinance. His biggest concern is that once the ordinance allowing these systems is adopted, the Commission is obliged to approve them, if the criteria are met, regardless of what it looks like or what the neighbors may think about it. Without the ordinance, the Commission would be able to get the public input that they do not have now. Commissioner Scott agreed.

Wendolowski recommended some changes – limiting it to one system per property. He stated that City Manager Hitt may also be able to get the Council's opinion. Another work session can be scheduled.

C. Drive-Through/Walk-Up Standards

Wendolowski stated that the Commission recently viewed a Class 3 Variance to permit the placement of the drive-through driveway adjacent to a public street and intersection (Jack-in-the-Box) and considered similar design issues to allow the Central Willamette project. Because of these applications, the Commission requested staff review the current Code language. This work session is to review current requirements and to consider proposed Code revisions.

Current requirements are found in Exhibit A of staff's report. Briefly, drive-through facilities must orient toward an "an alley, drive way, or interior parking area, and not a street." Such facilities must be separated by a 10-foot landscaped buffer from the street and cannot be oriented toward a street corner (exceptions: walk-up teller, kiosk). Queuing areas cannot obstruct driveways or walkways.

So far, only the OSU Credit Union drive-through met all requirements. In the noted cases, the Commission faced the issue of locating a drive-through driveway (queuing area) adjacent to a street. Compliance is particularly difficult with corner lots or with restricted access, which frequently occurs on new development along US Highway 20.

The Code restrictions address aesthetic concerns, and also traffic safety with potential headlight glare. However, installation of sufficient buffering/screening reduced some of these concerns. By approving the layouts, the Commission effectively concluded that while the current provisions may be preferred, there are situations whereby conformity is not possible or the impacts can be mitigated. If this is the case, then modifying the regulations may be appropriate.

Exhibit B contains proposed new language for the Commission's consideration. There are two basic parts: the first addressing a drive-in/drive-through; and the second addressing a walk-up window (something likely in the downtown).

1. Section 16.08.100.B.1 Drive-Through Service

- a) **Circulation.** The overall circulation plan for a site shall not cause traffic congestion on surrounding streets and shall minimize potential nuisances to nearby residential property caused by vehicles and use of the order board. Goal – minimize traffic and noise impacts, primarily on residential properties. This is less likely an issue within a commercial-zoned area.
- b) **Access and Window Location.** Whenever feasible, drive-through lanes shall be accessed from the rear of a site, and run along the interior side property line or building elevation. This is a preference. OSU FCU complies with this; Jack-in-the-Box could not. This would allow the later without a variance.

- c) Vehicle Stacking. All drive-through lanes shall provide stacking for a minimum of six vehicles as measured from the drive-up window to the entrance of the drive-through lane. Minimum stacking may be achieved through multiple lanes. This Section establishes minimum stacking requirements and a method of measurement, including multiple lane facilities such as the OSU Credit Union.
- d) Setbacks. Where a drive-through lane will be located between a building and a roadway, a minimum 10-foot setback shall be required from the roadway right-of-way to the drive-through lane. This setback area shall be landscaped. The 10-foot setback remains a requirement and must be landscaped.
- e) Screening. Where a drive-through lane parallels a public street, the drive-through lane shall be screened by a combination of plantings, berms, and/or low retaining walls at least four feet in height. Recognizing the issue of headlight glare, this Section requires screening at a minimum height of 48 inches. However, this only applies to situations where the lane parallels a public street.
- f) Operation. Specific design and operational conditions may be imposed with approval of the drive-through facility. These may include, but are not limited to, additional vehicle stacking, increase in screening height, regulating the hours of operation and other measures, to reduce potential impacts on surrounding properties. The Code requires an AR or CU application for these uses. This allows the decision maker to require additional design or operational conditions.

2. Section 16.08.100.B.2 Walk-Up Window (Does not apply to Teller Machines)

- a) Circulation. The service windows shall be so located as not to interfere with pedestrian traffic along the adjacent sidewalk and vehicle traffic entering or exiting the site. The location of the window cannot interfere with pedestrians (and vehicle traffic) which essentially requires at least a 5-foot path along a sidewalk. This also addresses issues such as window location and queuing.
- b) Surfacing. The area where patrons place orders and receive ordered items shall be surfaced in concrete, brick, stone or other suitable surface material. This is a safety item to avoid the possibility of migrating dirt or gravel onto a public sidewalk. The "surface" will likely be the adjacent public sidewalk.
- c) Noise. The use of a loudspeaker shall be prohibited. This limitation is a reasonable prohibition against unnecessary noise.
- d) Operation. Specific design and operational conditions may be imposed with approval of the walk-up facility. These may include, but are not limited to, regulating the hours of operation, screening or buffering and other measures to reduce potential impacts on surrounding properties. The Code requires an AR or CU application for these uses. This allows the decision maker to require additional design or operational conditions.

It appears the issue is whether the Commission would like to address changes in the location drive-through facilities on an individual basis, or whether the Commission agrees these limitations may not be practical. If the later is the case, then amending the Code to allow greater flexibility would be appropriate. Staff will proceed based on the Commission's direction.

The Commissioners had any no issues and was agreeable to Wendolowski making a few changes and bringing this back to another work session.

7. NEW BUSINESS

A. Bio-Science and Technology Overlay Zone

Wendolowski reported that the Bio-Science and Technology Overlay Zone was approved by the Council. Staff is meeting with representatives from the College and Hospital next month to discuss how to properly implement this.

B. Mixed Use Zone Revisions

Wendolowski is working on a proposal for a series of parcels near downtown that contain a mix of residential and commercial uses but are all zoned RH. Property owners were contacted and asked if they would be interested in changing the zone from RH to MU. This would allow them to confer back and forth between residential and commercial activities without non-conformity. There would be no impact on Lebanon's housing capability since there is a tremendous surplus of land for residential development.

Wendolowski explained for Chairman Robertson that the boundaries are Vine Street to Academy Street one parcel deep up to about where an alley would be.

Chairman Robertson commented that this would help because some of the residential uses find it difficult to obtain a residential loan because it is non-conforming. Wendolowski pointed out that some of the commercial uses are also non-conforming.

C. De-Annexation of Berlin Road Properties

There was an interesting Council discussion about de-annexation of property along Berlin Road. It was annexed into the City in 2004 to allow for partitioning, which was not allowed in the County. After the annexation and partitioning, the owners are requesting that they be de-annexed because they do not want to pay storm water fee charges. The Council did not pass a resolution allowing the de-annexation. There was a brief discussion about a de-annexation case in Boardman.

D. 2010/2011 Land Use Comparisons

As of the end of this month, there will have been 73 land use applications, as compared to 69 for the entire year of 2010. For July and August 2010, valuation was \$1.4 million with fees about \$11,800. For the same time this year, valuation was \$2.16 million with fees close to \$28,000.

E. Development Updates – Wendolowski provided information on the following:

Staff approved a more than 60,000 square foot expansion for Entek. They will also be submitting an application for another building. Grassick reported that Entek is putting in four lines (25 new jobs) in the next 12 months.

Cascade Ridge has submitted building permits for the final four buildings.

Pacific Sunset is likely going through the initial engineering plans. We may see some improvement work next year. Grassick indicated that the sewer that services Pacific Sunset will provide gravity sewer access to the entire industrial property to the west.

Nothing has been heard budget-wise, but it looks as though the State VA Home is still on track to submit their application this year.

Improvement costs for the first phase of Ridgeway Butte would be about \$3 million, but the market is not there. However, a new plan with private streets, in-ground systems, and a smaller number of lots may be brought back. There was discussion about the idea of taking all property east of Berlin Road out of the UGB because the expense to develop the infrastructure is tremendous.

Grassick confirmed for Commissioner Scott that the pipe laying along 12th Street is part of the Westside Interceptor Project. Next year's plan is to extend it from Sherman Street, turn and go down Airway Road, crossover, and then down to Airport Road. Staff intended to do this as one big project but found that it could be done with cash revenue, and not a bond, if it was done over three or four years.

A 9600 square-foot shopping center was approved next to Wal-Mart.

In response to Commissioner Salvage's inquiry, Wendolowski stated that staff is unsure about the status of a lumber remanufacturing business at the Cheadle Lake mill.

Commissioner Reineccius asked about industrial development on Weirich Drive. Wendolowski reported that City Manager Hitt had heard that they are still interested in pursuing this but are shopping around for energy credits.

Responding to Commissioner Salvage's question, Grassick stated that all standing facilities at the Weyerhaeuser site were demolished. The property is on the market, but the north access is limited and staff is reluctant to reintroduce truck traffic on Milton Street.

Commissioner Scott asked about the status of Rick Franklin's project. Grassick indicated that a lot of the right-of-way has been cleared.

Commissioner Scott asked how much of the Small Waterline Replacement Project is left. Grassick explained that replacements of utility systems are perpetual. Staff is focusing on transmission mains and are trying to pick up the perimeter loop around the City. The focus is to get up to \$500,000 per year in major maintenance replacement of water lines.

Chairman Robertson asked if there was any more discussion about the motel/restaurant on the Samaritan property. Wendolowski stated that discussions are that there are a variety of different markets in the City – Entek and hospital executives, Laticrete training, weekend baseball tournaments, and activities at Cheadle Lake. Each of those markets have a different type of a hotel. No one brand can come in and meet all those markets.

Grassick provided an update on the wastewater plant expansion. He also reported that staff is speaking with the bonding agency about a \$5 million water municipal revenue bond for a new tank on the south hill next spring.

F. New Office Hours

Community Development, now located at City Hall, is open from 7:00 a.m. to 5:00 p.m. Monday through Thursday and 7:30 a.m. to 1:00 p.m. on Friday.

G. Next Meeting Date

There are no applications for the October meeting.

8. COMMISSIONER COMMENTS:

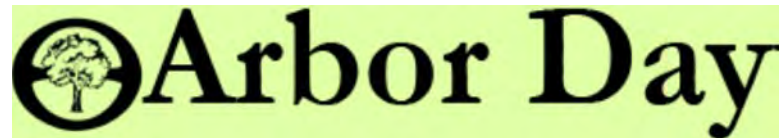
There were none.

9. ADJOURNMENT:

There being no further business, the meeting was adjourned at 9:00 p.m.

[Meeting recorded by Jamie Bilyeu and transcribed by Donna Trippett]

Proclamation(s)



PROCLAMATION

Whereas, in 1872, J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees; and

Whereas, this holiday, called Arbor Day, was first observed with the planting of more than one million trees in Nebraska; and

Whereas, Arbor Day is now observed throughout the nation and the world; and

Whereas, trees can reduce the erosion of our precious topsoil, cut heating and cooling costs, moderate the temperature, clean the air, produce life-giving oxygen, and provide habitat for wildlife; and

Whereas, trees are a renewable resource giving us paper, wood for our homes, fuel for our fires, and countless other wood products; and

Whereas, trees, are a source of joy and spiritual renewal.

NOW, THEREFORE I, Kenneth Toomb, Mayor of the City of Lebanon, do hereby proclaim April 5, 2012 as "**ARBOR DAY**" in the City of Lebanon, and urge all citizens to celebrate to support efforts to protect our trees and woodlands. Further, I urge all citizens to plant trees to gladden the heart and promote the well-being of this and future generations.

Kenneth I. Toomb, Mayor
City of Lebanon, Oregon

*In witness whereof, I hereunto cause the great seal of the
City of Lebanon to be affixed on this 14th day of March 2012*

Linda Kaser, City Clerk

Agenda Item 1



MEMORANDUM

Administration Department

To: Mayor and City Council

Date: March 6, 2012

From: John Hitt, City Manager

Subject: Proposed Sale of City-Owned Rail Spur and Appurtenances Thereof

Some time back, the City Council declared the City-owned rail spur as surplus property and directed staff to publicly solicit bids from any and all qualified bidders. That is, potential buyers who could realistically own, operate, and maintain the rail spur.

Sealed bids will be opened at City Hall on Wednesday, March 14th at 9:00 a.m. The bidding results will be brought to the City Council meeting that evening.

JEH/jb



MEMORANDUM

Utility & Engineering Services

To: Mayor and City Council
John Hitt, City Manager

Date: March 6, 2012

From: Dan Grassick, Utility & Engineering Services Manager

Subject: Sale of City-Owned Rail Spur

REQUEST

This is a request for Council approval to sell a City-owned rail spur to a qualified bidder.

BACKGROUND

At its July 14, 2010 meeting, the City Council declared surplus a City-owned rail spur that runs just west of 5th Street, along Olive Street, south of Linn-Benton Community College, and onto Albany & Eastern Railroad property off of Industrial Way. The surplus also included an approximate .15 non-buildable parcel of property, and associated rail appurtenances and easements.

ODOT Rail Division was provided notice of the sale per state statute, and has acknowledged the satisfaction of this requirement.

Additionally, a legal notice was published in the Lebanon Express on February 29, announcing the process for submitting bids to purchase the City-owned rail spur.

RESULTS & RECOMMENDATION

Sealed bids for the purchase of the rail spur are scheduled to be opened on Wednesday, March 14 at 9:00 AM.

Staff's recommendation will be presented to Council at that evening's Council meeting.

A RESOLUTION AUTHORIZING THE SALE) Resolution No. 2012-4
OF CITY-OWNED SURPLUS RAIL SPUR)
AND ASSOCIATED APPURTENANCES)

WHEREAS, on July 14, 2010, City Council declared surplus the City-owned rail spur that runs west of 5th Street, along Olive Street, south of Linn-Benton Community College, and onto Albany & Eastern Railroad property off of Industrial Way;

WHEREAS, the surplus rail spur includes an approximate .15 acre non-buildable parcel of property (Linn County Assessor Map 12S02W10AB#03300), and associated easements and appurtenances;

WHEREAS, Council directed staff to sell the surplus rail spur and publicly solicit bids from qualified bidders;

WHEREAS, ODOT Rail was provided notice of the sale of the rail spur per state statute, and acknowledged satisfaction of this requirement;

WHEREAS, a Public Notice was published in a local newspaper soliciting sealed bids from qualified bidders, and announcing that the sealed bids would be opened at 9:00 a.m. on March 14, 2012;

**NOW, THEREFORE, THE CITY OF LEBANON, LINN COUNTY, OREGON,
DOES RESOLVE AS FOLLOWS:**

The surplus rail spur, including an approximate .15 acre non-buildable parcel of real property, and associated easements and appurtenances, shall be conveyed through quit-claim deed to the qualified bidder, _____, for consideration of \$_____.

Adopted by the Lebanon City Council and executed on the 14th day of March, 2012, with ____ Yeas, and ____ Nays.

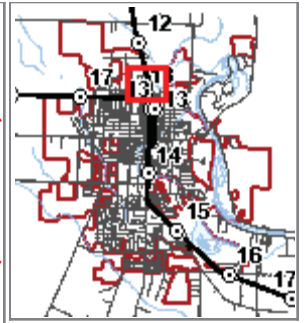
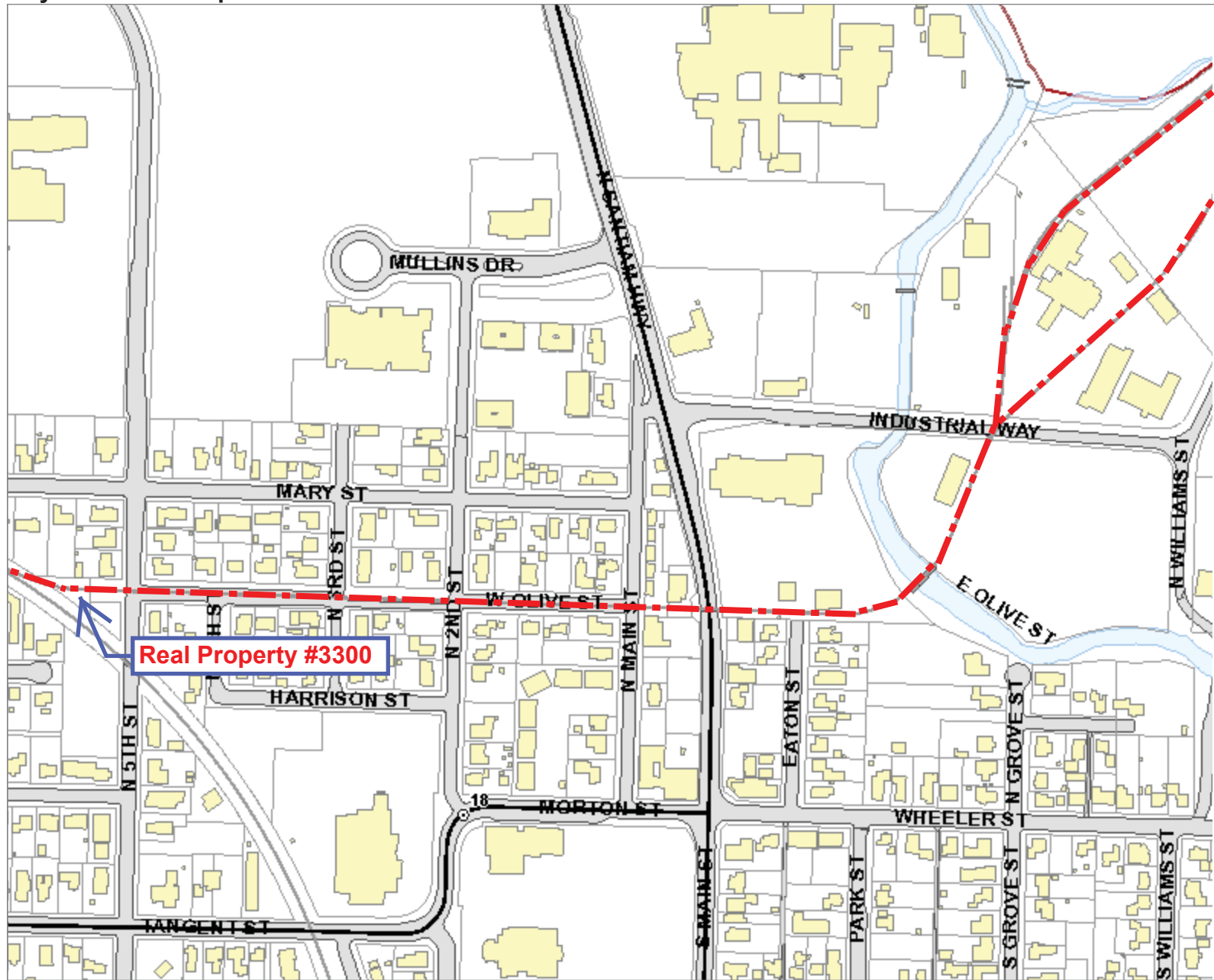
CITY COUNCIL OF LEBANON, OREGON

Kenneth I. Toomb, Mayor
Bob Elliott, Council President

Attested by:

Linda Kaser, City Recorder

City-Owned Rail Spur



Real Property #3300



Approx. Scale 1:4,471
1 in = 373 ft

Coordinate System: State Plane OR North
Horizontal Datum: NAD 83/91 (HARN)
Vertical Datum: NAVD88
Aerial Photo: March 2005



925 S Main St.
Lebanon, Oregon
(541) 258-4900
www.ci.lebanon.or.us

Comments:

This map is for informational purposes only. The City of Lebanon makes no representations as to the accuracy, completeness and timeliness of the information displayed.

City of Lebanon, Grantor
_____, Grantee

Until a change is requested, all
tax statements shall be sent to the
following address:

After recording, return to:

QUITCLAIM DEED—STATUTORY FORM

The City of Lebanon, an Oregon municipal corporation, Grantor, releases and quitclaims to _____, an Oregon _____, Grantee, all of Grantor's right, title and interest in and to the following-described real property in Linn County, Oregon:

See Exhibit A attached hereto.

Including any and all easements over, across, under, through and on certain strips and tracts of land, with rights of access thereto, within the boundaries of the City of Lebanon, Linn County, Oregon for the purpose of installing, reinstalling, operating, maintaining, repairing and replacement of the existing railroad spur track;

Together with those certain installed fixtures and facilities including the railroad bridges, railcar scales and shack, tracks, ties, switches, and signals for the continued operation, maintenance and repair of all existing railroad tracks and spurs as presently constructed and all directly or indirectly related implements and conveniences.

And Also of Grantors right, title and interest in and to all those certain rights to operate said railroad spur as granted by the Grantee in Ordinance No. 36 dated May 15, 1894 and as amended since that date.

And Also all right, title and interest in and to the privileges and obligations established by all PUC orders affecting said property and Crossing No. CC-688.21-C and DOT Crossing No. 759 948T.

And subject to all matters of public record.

The true consideration for this conveyance is \$ _____ and other good and valuable consideration.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

DATED this _____ day of _____, 2012.

Kenneth Toomb, Mayor of Lebanon, Oregon

STATE OF OREGON)
) ss.
County of Linn)

On this ___ day of August, 2012, before me _____, a notary public in and for said state, personally appeared being by me first duly sworn, declared that he is the Mayor of Lebanon, Oregon and that he signed the foregoing document as an officer.

Notary Public for Oregon
My commission expires:

EXHIBIT "A"

PARCEL ONE
(Triangle at SP&S RR R/W in Olive Street)
(City of Lebanon, Oregon)

A TRACT of land described as follows:

A small piece or parcel of land off of the Southeast corner of Block Number 13 in Wassom's Addition to the Town of Lebanon, Linn County, Oregon, BEGINNING at the Southeast corner of said Block 13 and running thence North 95.0 feet; thence West 140.0 feet to the Northern boundary of the right of way of the Oregon and California Railroad Company (now the Southern Pacific Railroad) near a point called "Callaghan Switch"; thence in a Southeasterly course along said Northern boundary of said right of way to the place of beginning, containing 6650.0 square feet, more or less.

SEGMENT "A"
(Railroad Spur from Callaghan Switch to West Line Hiway #20)

An easement on a strip of land 20.00 feet in width being 10.00 feet on each side of, when measured at right angles to, the centerline hereof, said centerline being described as follows:

BEGINNING at a point which is South 231.83 feet and East 252.82 feet from the Northeast corner of Block 2 of Wassom's Addition to the City of Lebanon, in Section 10, Township 12 South, Range 2 West, W.M., Linn County, Oregon and being on the Easterly right-of-way of the Santiam Highway (U.S. Highway No. 20); thence North 89°51'09" West 1620.83 feet to a point on the arc of a circular curve concave to the Northeast; thence Westerly and Northwesterly along the arc of said curve having for its elements a radius of 451.76 feet and a central angle of 28°31'49" for 224.95 feet to the tracks of the Southern Pacific Railroad Company at the "Callaghan" switch; excepting, however, the right-of-way of the Santiam Highway (U.S. Highway No. 20) and that portion of the above "strip" within the right-of-way of Main Street in the City of Lebanon.

SEGMENT "B"
(Railroad Spur from East line of Hiway #20 to POINT "J")

An easement on a strip of land 20.00 feet in width being 10.00 feet on each side of, when measured at right angles to, the center line hereof, and described as follows:

BEGINNING at a point which is South 231.83 feet and East 252.82 feet from the Northeast corner of Block 2 of Wassom's Addition to the City of Lebanon, in Section 10, Township 12 South, Range 2 West, W.M., Linn County, Oregon and being on the Easterly right-of-way of the Santiam Highway (U.S. Highway No. 20); thence South 89°38'58" East 289.21 feet to a point on the arc of a circular curve concave to the Northwest; thence Easterly and Northeasterly along the arc of said curve having for its elements a radius of 303.70 feet and a central angle of 70°13'02" for 372.19 feet to the point of tangency and herein called "POINT U"; thence North 20°07'55" East 240.00 feet to a point herein called "POINT H"; thence continuing 47.35 feet to the point of curvature of a circular curve concave to the West; thence Northerly along the arc of said curve having for its elements a radius of 425.32 feet and a central angle of 19°52'58" for 147.59 feet to a point of reverse curvature of a circular curve concave to the East; thence Northerly along the arc of said curve having for its elements a radius of 865.00 feet and a central angle of 6°10'35" for 27.31 feet to a point herein called "POINT L"; Thence continuing 65.94 feet to a point herein called "POINT A" being a point of reverse curvature of a circular curve concave to the West; thence Northerly along the arc of said curve having for its elements a radius of 2039.75 feet and a central angle of 6°03'57" for 215.95 feet to a point of tangency; thence North 00°16'11" East 178.38 feet to the terminus of the herein described centerline and a point herein called "POINT J".

SEGMENT "C"
(Railroad Spur from POINT U to POINT T)

An easement on a strip of land 20.00 feet in width being 10.00 feet on each side of, when measured at right angles to, the center line hereof, and described as follows:

BEGINNING at that point on the arc of a curve having for its elements a radius of 303.70 feet and a central angle of 70°13'02" above identified in SEGMENT "B" as POINT "U"; thence continuing Northerly along the arc of a compound curvature of a circular curve concave to the West, said curve having for its elements a radius of 617.80 feet and a central angle 18°11'24" for 196.14 feet to the point of tangency; thence North 02°10'49" East 111.49 feet to the terminus of this segment of the herein described centerline and a point designated "POINT T".

SEGMENT "D"
(Railroad Spur from POINT H through POINT G to POINT F)

An easement on a strip of land 20.00 feet in width being 10.00 feet on each side of, when measured at right angles to, the center line hereof, and described as follows:

BEGINNING at a point being the point of curvature of a circular curve concave to the Southeast and above identified in SEGMENT "B" as POINT H" of the herein described easement; thence Northerly and Northeasterly along the arc of said curve having for its elements a radius of 250.85 feet and a central angle of 26°22'04" for 115.44 feet to the point of tangency; thence North 46°21'17" East 455.14 feet to the point of curvature of a circular curve concave to the Northwest; thence Northeasterly along the arc of said curve having for its elements a radius of 587.23 feet and a central angle of 5°22'44" for 55.13 feet to "POINT G"; Thence continuing Northeasterly along the arc of said curve having for its elements a radius of 587.23 feet and a central angle of 26°19'52" for 269.87 feet to "POINT F".

SEGMENT "E"
(Railroad Spur from POINT A to POINT B)

An easement on a strip of land 20.00 feet in width being 10.00 feet on each side of, when measured at right angles to, the center line hereof, and described as follows:

BEGINNING at a point of tangency and a point above identified in SEGMENT "B" as "POINT A"; thence North 11°40'15" East 101.21 feet to the point of curvature of a circular curve concave to the Southeast; thence Northeasterly along the arc of said curve having for its elements a radius of 522.27 feet and a central angle of 37°50'12" for 344.89 feet to the point of tangency; thence North 49°28'17" East 543.54 feet to a point designated as "POINT B".

SEGMENT "F"
(Railroad Spur from POINT L to POINT J)

An easement on a strip of land 20.00 feet in width being 10.00 feet on each side of, when measured at right angles to, the center line hereof, and described as follows:

BEGINNING at a point of tangency and a point above identified in SEGMENT "B" as "POINT L"; Thence North 00°34'35" West 224.98 feet to the terminus of this segment of the herein described centerline and a point designated "POINT K".

All as shown on Plat marked Exhibit B, being a reduced scale reproduction of a portion of DEVCO ENGINEERING Project Drawing 84-44 dated 3-15-85 as revised,, attached hereto and by this reference made a part hereof.



MEMORANDUM

Utility & Engineering Services

To: Mayor and City Council
John Hitt, City Manager

Date: March 14, 2012

From: Dan Grassick, Utility & Engineering Services Manager

Subject: Sale of City-Owned Rail Spur

This memo supplements the previously submitted memo to Council dated March 6, 2012.

REQUEST

This is a request for Council to approve the sale of the City-owned rail spur to Albany & Eastern Railroad Company.

BACKGROUND

A legal notice was published in the Lebanon Express on February 29, announcing the process for submitting bids to purchase the City-owned rail spur.

RESULTS & RECOMMENDATION

One sealed bid was received and opened at 9 AM on Wednesday, March 14, 2012 – the date and time set for opening sealed bids for the purchase of the rail spur.

Staff recommends that the City sell and transfer the ownership of the rail spur to AERC through a Quit Claim Deed for the sum of \$1.00.



110 Industrial Way
Lebanon, Oregon 97355

Received 03/07/12
City of Lebanon
Opened 03/14/12 7:06 AM
jb
jb

(541) 259-6470
Fax: (541) 259-4130

March 6, 2012

Dan Grassick
Manager, Utility & Engineering Svc's
City of Lebanon
925 South Main Street
Lebanon, OR 97355

Subj: OFFER TO PURCHASE CITY OWNED RAIL SPUR AND ASSOCIATED APPURTENANCES

Dear Dan:

The Albany & Eastern Railroad (AERC) wishes to purchase the South Santiam Rail Spur and associated appurtenances from the City of Lebanon for the sum of one US Dollar (\$1.00). This offer includes the track structure extending from the Rick Franklin Corporation facility on Industrial way to the junction switch located west of the intersection of 5th and Olive Streets.

In 2010 the AERC, in conjunction with Rick Franklin Corporation (RFC), completed a \$750,000 rehabilitation of the spur consisting of the replacement of rail ties, upgrade of the rail and surfacing of Olive Street. This project served to improve public safety for members of the community as well as facilitate improved railroad operational capacity and capability.

This spur serves as the nexus between AERC's "home base" and the operating track system, and connects with RFC and its associated LLC, Specialized Metals Recycling (SMR). Its continued use and preservation under AERC's ownership will benefit the Lebanon community in a number of ways including the preservation of existing Jobs, reduction of truck traffic by offering a rail option, and the creation of new jobs within the community (currently working with a potential new user).

We look forward to your acceptance of this offer. Please do not hesitate to contact me at 541-401-4016 with any questions.

Sincerely,


Mark Russell
General Manager

Agenda Item 2



MEMORANDUM

Administration Department

To: Mayor and City Council
From: John Hitt, City Manager
Subject: Proposed Economic Development Agreement –
City of Lebanon URA / Marathon Acquisition and Development, Inc.

Date: March 6, 2012

Attached is a draft development agreement that, at the time of writing this memo, is still being negotiated. We expect to hand-carry a final draft to the City Council meeting on the evening of March 14th, although we may be able to email the final draft a day or two earlier.

The proposed agreement focuses on a multi-family housing project south of Russell Drive on McKinney Lane. This proposal has been approved by the Planning Commission (conceptual development plans are attached).

Due to its substantial distance from existing water, sewer and storm drainage, and the relatively large amount of off-site improvements required, Marathon Development is asking for financial assistance from the Cheadle Lake URD.

In concept, this agreement is similar to the one currently in place between the North Gateway URD and Samaritan Health Services. That is, in both cases, the developer/owner pays the cost of necessary infrastructure and then is reimbursed for those expenses from future tax revenues received (by the URD) as a result of the development.

In this particular agreement, if approved, the Cheadle Lake URA would agree:

- To repay a maximum of \$355,000;
- The repayment would begin in March 2014 and not continue more than 12 years;
- The maximum agency payment per year is \$40,000;
- The agency shall pay 75% of taxes collected from the development property;
- Neither the agency, nor the city, shall be responsible for any payments beyond actual tax receipts received that are directly attributable to the property;
- All of the off-site improvements encompassed in this agreement are broadly consistent with the Cheadle Lake URA Plan;
- The Cheadle Lake URD would also be responsible to repay the City approximately \$285,000 in SDC fees, which Marathon would not be required to pay.

Representatives of Marathon Acquisition and Development, Inc. will be present at the March 14th City Council meeting in order to provide additional information about their project and answer any questions.

Marathon has expressed an interest in starting work as soon as possible.

JEH/jb

**ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE
CITY OF LEBANON, URBAN RENEWAL AGENCY OF THE CITY OF LEBANON, AND
MARATHON ACQUISITION & DEVELOPMENT, INC.**

This Economic Development Agreement (“Agreement”) is entered into as of this ____ day of March, 2012 between the CITY OF LEBANON, OREGON, an Oregon municipal corporation (“City”), the URBAN RENEWAL AGENCY OF THE CITY OF LEBANON, the duly authorized and acting urban renewal agency of the City of Lebanon, Oregon (“Agency”), MARATHON ACQUISITION & DEVELOPMENT, INC. (“Marathon”), an Oregon corporation, and the KENNETH G. MARSHALL 401(k) PROFIT SHARING PLAN, Kenneth G. Marshall Trustee, (“Marshall Trust”) an Oregon Trust. Agency, City, Marathon and the Marshall Trust may each be referred to as a “party” and may be jointly referred to as “parties.”

RECITALS

- A. Marathon has submitted an application for a planned development of 2.63+/- acres on McKinney Lane (the “Property”) comprising 60 units of Multiple-Family Dwellings in one phase, to include 24 Studio Apartments, 32 One Bedroom Apartments and 4 Two Bedroom Apartments (the “Development”). The Property is currently owned by the Marshall Trust. The Application is attached hereto as Exhibit A and incorporated herein as though fully set forth.
- B. The parties recognize the mutual benefit of the Development, specifically the potential for job creation during construction, attraction of new business and residents who need housing, an increase in community wealth, and the development of housing.
- C. The Agency is willing to participate in the cost of the Development of the Property in order to realize the public benefits cited above.
- D. On August 30, 2000 the City Council approved the Cheadle Lake Urban Renewal Plan, by adoption of Ordinance No. 2270 (“Plan”).
- E. The Plan includes certain off-site improvement projects that will benefit the Development, as described below, and the completion of these off-site improvement projects is integral to undertaking the Development.
- F. The Plan projects that will benefit the Development will be funded primarily by tax increment revenues generated by the value of taxable projects in the Plan’s area. However, until the taxable development occurs, the Agency does not have funds available to undertake the Plan’s projects.
- G. The parties have agreed, in concept, that Marathon will be responsible for all of the Off-Site Improvements (hereinafter defined) necessary for the Development. These Off-Site Improvements include bringing sewer and water services East on Russell Drive to the railroad tracks; improving McKinney Lane; and improving the capacity of the storm water system on property to the North of the Development; designing full street improvements to Russell Drive along the Russell Drive frontage of the Property; mitigating any wetlands in the McKinney Lane right of way; and in Marathon’s discretion paving the shoulder of Russell Drive. The current estimate for all of the Off-Site Improvements is \$767,000.

- H. Marathon has agreed to privately finance the first \$150,000 of the off-site improvements for the Development.
- I. The City has agreed to waive the SDC fees for the Development, including traffic impact, storm water, park, water, street, and traffic impact and SDC fees, which are estimated at \$285,000. The SDC and impact fees will be recouped by the City from the Agency through incremental property tax payments over time.
- J. In addition to the City waiving SDC fees for the Development, the Agency shall reimburse Marathon for the actual cost of the construction of the Off-Site Improvements herein described, but not to exceed \$355,000. The agency shall reimburse Marathon in an annual amount of 75% of the incremental property tax directly attributable to the Development and Property, but not to exceed \$40,000 per year.
- K. In addition to the City waiving SDC fees for the Development and the Agency reimbursing a maximum of \$355,000, the City and Agency shall pay Marathon 80% of any fees paid by the public to hook-up to the utilities constructed as part of the Off-Site Improvements.
- L. The parties are now prepared to enter into this Agreement as their respective commitments to Property and Development subject to the conditions contained herein.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

I. GENERAL PROVISIONS

A. Off-Site Improvements

Marathon shall be responsible for and hereby agrees to construct the following off-site infrastructure improvements (the “Off-Site Improvements”):

1. Install approximately 1020 feet of 12” public sanitary sewer from the existing public sanitary sewer East of Primrose Avenue extended East on Russell Drive to the railroad tracks.
2. Install approximately 1250 feet of 12” public water line from approximately Primrose Avenue extended East on Russell Drive to the railroad tracks.
3. Install approximately 650 feet of partial street and utility infrastructure in the McKinney Lane right of way for the frontage of the Development on the west side of the Property.
4. Design full street improvements to Russell Drive along the Russell Drive frontage of the Property;
5. Mitigate any wetlands in the McKinney Lane East right of way; and
6. Install and upgrade downstream storm drainage culverts under Russell Drive to the North of the Property and on the Walt Badger property to the North of the Property.

B. Construction of Off-Site Improvements

The Off-Site Improvements shall require City-approved engineering plans and shall be constructed to City Public Works Standards. The general contractor constructing the Off-Site Improvements shall provide a public improvements bond. The Off-Site Improvements described in Sections A(1), A(2), and A(3) shall be dedicated to the public, including any associated easements. The construction of the Off-Site Improvements shall not require paying prevailing wages. If the general contractor or subcontractors constructing the Off-Site Improvements are required to pay prevailing wages, the cost increases attributable to the prevailing wages shall be included in the budget for the Off-Site Improvements and shall be recouped by Marathon in accordance with Section C(2).

The City and Agency have reviewed and approved Marathon’s construction budget for the Off-Site Improvements in the amount of \$767,000, which includes but is not limited to hard costs, civil engineering, wetland mitigation, general contractor’s payroll, and a 7.5% contingency (the “Budget”). The City, Agency, and Marathon have agreed to a payment, credit, and reimbursement plan for the Budget as detailed in Section I (C) below. In administering the construction of the Off-Site Improvements and the Budget Marathon may use excess funds in a given line item to cover shortfalls in other line items.

C. Off-Site Improvements Financing

Marathon currently estimates that the cost of the Off-Site Improvements will be \$767,000. The parties agree that Marathon shall be solely responsible for the first \$150,000.00 of the costs of the Off-Site Improvements, which shall be reimbursed from hook-up fees as provided in Section I (F). The

parties agree to the following credit/reimbursement plan for the remaining (approximately \$640,000) cost of the Off-Site Improvements:

1. The City agrees and hereby does waive all SDC fees payable by Marathon for the Development. Marathon estimates the SDC fees for the Development will be \$285,000. The actual amount of SDC fees shall be credited against the total cost of the Off-Site Improvements. Marathon shall not have to pay the SDC fees upon obtaining building permits from the City or otherwise.
2. After credit of SDC fees (approximately \$285,000) and payment of the initial \$150,000 by Marathon, the remaining cost of the Off-Site Improvements, approximately \$332,000 (amount not to exceed \$355,00) (the "Remaining Costs") shall be reimbursed to Marathon through incremental property tax receipts, as follows:
 - a. The Agency shall reimburse Marathon seventy-five percent (75%) off all incremental property tax receipts collected by Linn County resulting from the Property. Such reimbursement shall continue from year to year until Marathon is fully reimbursed the Remaining Costs.
 - b. The Agency and the City represent that the Agency is entitled to receive per the Plan all of the tax revenue collected by Linn County from the Property. If the Agency does not for any reason, other than stated herein, reimburse Marathon the Remaining Costs, the City agrees to pay Marathon the Remaining Costs by remitting to Marathon an amount equal to seventy-five percent (75%) off all incremental property tax collected by Linn County from the Property.
 - c. Reimbursements to Marathon of the Remaining Costs from any source shall be capped at a maximum of \$40,000 per year, regardless of the total amount of tax increment increase realized.
 - d. The Agency and City shall not be responsible for any reimbursements to Marathon after June 30 of the year which is twelve years after final completion of the Off-Site Improvements (the "Termination Date"), even though Marathon has not been reimbursed all of the Remaining Costs. All obligations to pay Marathon the Remaining Costs shall terminate on the Termination Date. The Agency shall not be responsible or liable if the tax increment collected from the Property through the Termination Date results in reimbursement to Marathon of less than Marathon's cost of the Off-Site Improvements.
 - e. Marathon shall not be entitled to any express or implied interest rate or late fee charge over and above Marathon's actual construction costs as reviewed and approved by the Agency. Marathon's actual construction costs shall include payroll and construction administration and the cost of a public improvements bond.

D. System Development Charges Reimbursement

The Agency shall be responsible for repayment of all SDC fees to the City. The Agency shall reimburse the City for all actual SDC fees after it has met its repayment obligations to Marathon. Such reimbursement shall be paid from tax increment increases from the Development.

E. Estimates

The parties to this Agreement recognize that this Agreement is being entered into based on estimates relating to the Off-Site Improvements and the value of SDC fees. The parties' obligations

hereunder shall ultimately be based on actual costs of the Off-Site Improvements and SDC fees as determined after construction of the Development. The parties agree that any party may demand and receive all documentation necessary to determine or confirm the amount of actual costs of the Off-Site Improvements.

F. Cost Recovery From Hook-Up Fees

Marathon is privately financing \$150,000 of the costs of the Off-Site Improvements. The City and URA shall collect hook-up fees from parties desiring to hook-up to the utilities constructed by Marathon. The City and URA shall pay Marathon 80% of those fees as cost recovery until Marathon's \$150,000 expenditure is fully reimbursed. A memorandum of said agreement shall be recorded against the real property affected by the Off-Site Improvements.

G. Condition to Marathon's Obligations

Marathon shall have no obligations under this Agreement until Marathon in Marathon sole discretion decides to develop and construct the Development.

II. MISCELLANEOUS PROVISIONS

A. Effective Date

The rights and obligations of the parties under this Agreement will commence on the date of the last signature by a party (the "Effective Date").

B. Default; Cure

1. Default By Marathon. The following shall constitute defaults on the part of Marathon:
 - a. Any breach of the provisions of this Agreement whether by action or inaction, which continues and is not remedied within thirty (30) days after Agency has given notice to Marathon specifying the breach; provided that if the Agency determines that such breach cannot with due diligence be cured within a period of thirty (30) days, the Agency may, in its sole discretion, allow Marathon a longer period of time to cure such breach, and in any such event such breach shall not constitute a default hereunder so long as Marathon diligently proceeds to effect such cure and such cure is accomplished within such longer period of time granted by the Agency; or
 - b. Any assignment by Marathon for the benefit of creditors, or adjudication as a bankrupt, or appointment of a receiver, trustee or creditor's committee over Marathon.
2. Default By City. City shall be in default hereunder if it breaches any of the provisions of this Agreement whether by action or inaction, and such breach continues and is not remedied within thirty (30) days after Marathon has given notice specifying the breach; provided that if Marathon determines that such breach cannot with due diligence be cured within a period of thirty (30) days, Marathon may, in its sole discretion, allow the City a longer period of time to cure such breach, and in any such event such breach shall not constitute a default hereunder so long as the City diligently proceeds to effect such cure and such cure is accomplished within such longer period of time granted by Marathon.
3. Default By Agency. Agency shall be in default hereunder if it breaches any of the provisions of this Agreement whether by action or inaction, and such breach continues and is not remedied within thirty (30) days after Marathon has given notice specifying the breach; provided that if Marathon determines that such breach cannot with due diligence

be cured within a period of thirty (30) days, Marathon may, in its sole discretion, allow the Agency a longer period of time to cure such breach, and in any such event such breach shall not constitute a default hereunder so long as the Agency diligently proceeds to effect such cure and such cure is accomplished within such longer period of time granted by Marathon.

C. Remedies

1. Default. Upon default under the terms of this Agreement, the non-defaulting party may, in addition to any other remedies at law or in equity, recover from the defaulting party any monetary damage resulting from the default; and/or compel performance under this Agreement to prevent the defaulting party from action contrary to the Agreement by injunction or other equitable relief including but not limited to specific performance. The non-defaulting party shall be relieved from any obligations under the Agreement which were contingent upon the failed performance.
2. Nonexclusive Remedies. No remedy by the terms of this Agreement conferred upon or reserved to any party is intended to be exclusive of any other remedy allowed by law, but, unless expressly provided otherwise herein, each and every such remedy shall be cumulative and shall be in addition to any other remedy given to each party hereunder. In case any party shall have proceeded to enforce any right or remedy hereunder and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the parties shall be restored to their former positions and rights hereunder and all rights, remedies and powers of each party shall continue as if no such proceedings had been taken except as modified by such proceedings.
3. Waiver Of Default. To the extent not precluded by this Agreement, the non-defaulting party may, in its discretion, waive any default hereunder and its consequences and rescind any consequence of such default and, in case of any such waiver or rescission, the Parties shall be restored to their former positions and rights hereunder respectively, but no such waiver or rescission shall extend to or affect any subsequent or other default, or impair any right consequent thereon. No such waiver or rescission shall be in effect unless the same is in writing and signed by the non-defaulting party.
4. No Implied Waiver. No delay or omission to exercise any right or power shall be construed to be a waiver of any such default or acquiescence therein; and every such right and power may be exercised from time to time and as often as may be deemed expedient.

D. Force Majeure

1. From the date of execution of this Agreement, neither the City, the Agency nor Marathon, as the case may be, nor any assignee or successor in interest shall be considered in breach of or default in its obligations with respect to any obligations created hereunder or progress in respect thereto, in the event of delay (“Unavoidable Delay”) in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including but not limited to acts of God, or of the public enemy, acts of the Government (other than acts of the City of Lebanon or any agency or entity over which the City has substantial control), acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, bid protests, freight embargoes, earthquake, explosion, mob violence, riot, inability to procure or general sabotage or rationing of labor, equipment, facilities, sources of energy, material or supplies in the open market, malicious mischief, condemnation, and unusually severe weather or delays of suppliers or

subcontractors due to such causes or any similar events and/or occurrences beyond the control of the Parties; it being the purpose and intent of this provision that in the event of the occurrence of any such Unavoidable Delay the time or times for performance of the obligations of the Parties, as the case may be, shall be extended for the period of the Unavoidable Delay; provided, that the party seeking the benefit of the provisions of this section shall, within thirty (30) days after the party becomes aware of an Unavoidable Delay, have first notified the other party thereof in writing of the cause or causes thereof and the estimated time of correction. Any action or failure to act by a party pursuant to this Agreement which is not due to Unavoidable Delay shall not excuse the performance hereunder by that party. Either party may suspend its performance under this Agreement in the event the other party has been excused from performance by reason of an Unavoidable Delay lasting more than six months. A party which intends to suspend its performance based on the other's Unavoidable Delay, shall notify the other party in writing of the specific date of suspension of performance and the specific performance it will not undertake or continue. Upon resumption of performance by the party initially excused due to Unavoidable Delay, all Parties shall immediately resume performance.

- E. Dispute Resolution. The parties shall engage in nonbinding mediation as the first means to seek a settlement of any dispute under this Agreement. If mediation is unsuccessful then either party may at any time request binding arbitration of any matter in dispute unless litigation has already commenced and continued more than 90 days after the first legal process has been served on a party to this agreement by the other party without any request for arbitration by the party served. Any party who fails to submit to mediation or arbitration following a lawful demand by the other party shall bear all costs and expenses, including reasonable attorneys' fees, (including those incurred in any trial, bankruptcy proceeding, appeal or review) incurred by the other party in obtaining a stay of any pending judicial proceeding concerning a dispute, until mediation and arbitration are completed. The party requesting mediation or arbitration shall do so by giving notice to that effect to the other party, specifying in said notice the nature of the dispute. Arbitration shall be conducted by the Arbitration Service of Portland, Inc. in the City of Lebanon, Oregon, before a single arbitrator (unless the amount in dispute exceeds \$200,000 in which event there shall be three arbitrators). The determination of the arbitrator shall be final and binding other than for any mistake of law by the arbitrator. The arbitrator(s) shall be a licensed attorney having at least 15 years experience with real estate development matters. The award in such arbitration may be enforced on the application of either party by the order of judgment of a court of competent jurisdiction. The arbitrator shall determine and award the prevailing party in the arbitration the reasonable expense of its attorneys and experts incurred in connection with any arbitration. The arbitrator shall resolve all disputes in accordance with the laws of the state of Oregon and shall make a record of the evidence and issue a written decision including findings of fact and law. The arbitrator shall have neither authority nor jurisdiction to award any damages or any other remedies beyond those which could have been awarded in a court of law if the parties had litigated the claims instead of arbitrating them. No provision of, nor the exercise of any rights under this clause shall limit the right of a party to exercise self-help remedies or obtain equitable type remedies such as an injunction, receivership, attachment or garnishment. Each party agrees to keep all disputes, mediation and arbitration proceedings strictly confidential, except for the disclosure of information required in the ordinary course of business of the parties or as required by applicable law or regulation. If any provision of this arbitration program is declared invalid by any court, the remaining provisions shall not be affected thereby and shall remain fully enforceable. The parties understand that they have decided that upon

demand of either of them, their disputes as described herein will be resolved by arbitration rather than in a court and once so decided cannot later be brought, filed or pursued in court other than for a mistake of law, lack of substantial evidence to support factual findings or other extraordinary errors.

F. Miscellaneous Provisions

1. Discrimination. Developer, for itself and its successor and assigns, agrees that, during the construction of the Project, Marathon will not discriminate against any employee or applicant for employment because of race, color, religion, age, gender, sexual orientation or national origin.
2. Wages. Marathon agrees to comply with all federal and state laws regarding wages and employment with respect to the Development, including construction of all of the Off-Site Improvements.
3. Process. Marathon agrees to submit all of the Off-Site Improvements designs, construction plans & agreements and inspection reports to the agency prior to proceeding. Upon final completion of the Off-Site Improvements, Marathon shall provide to the Agency a comprehensive final project report. The Agency may, with 120 days of receipt, challenge the accuracy or completeness of the final report, subject to the dispute resolution provisions contained herein. After completion of the Off-Site Improvements, but not sooner than March 31, 2014, Marathon shall notify the agency by March 31 of each year of the amount due under the terms of this Agreement. The agency shall have until May 30 to pay the amount due or dispute the amount due under the dispute resolution section of this agreement. No further payments shall be made, under the terms of this agreement, upon reimbursement of all Marathon's off-site improvement costs, not to exceed \$355,000 (\$640,000 including the SDC fee waiver), or anytime after the Termination Date.
4. Notice. Any notice or communication under this Agreement by either party to the other shall be deemed given and delivered (a) forty-eight (48) hours after being dispatched by registered or certified U.S. mail, postage prepaid, return receipt requested, or (b) when received if personally delivered, and:

In the case of a notice or communication to Marathon, addressed as follows:

Aaron M. Wigod
Marathon Acquisition and Development
30050 SW Town Center Loop West
Wilsonville, OR 97070

In the case of a notice or communication to City or Agency, addressed as follows:

John Hitt
City Manager
City of Lebanon
925 Main Street
Lebanon, OR 97355

or addressed in such other way in respect to either party as that party may, from time to time, designate in writing dispatched as provided in this Section. Notice given in any other manner shall be effective upon receipt by the party for whom the same is intended.

5. Headings. Titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
6. Governing Law, Venue, Consent to Jurisdiction. This Agreement shall be governed by Oregon law, without regard to principles of conflicts of law. Any action or suit to enforce or construe any provision of this Agreement by any Party must be brought in the Circuit Court of the State of Oregon for Linn County or, if the action or suit must be brought in a federal forum, the United States District Court for the District of Oregon in Eugene, Oregon. Each Party, by execution of this Agreement, hereby consents to the in personam jurisdiction of said courts.
7. Calculation of Time. All periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the state of Oregon, except that if the last day of any period falls on any Saturday, Sunday or legal holiday, the period shall be extended to include the next day which is not a Saturday, Sunday or legal holiday.
8. Construction. In construing this Agreement, singular pronouns shall be taken to mean and include the plural and the masculine pronoun shall be taken to mean and include the feminine and the neuter, as the context may require.
9. Legal Purpose. Marathon agrees that it shall use the Property and improvements on the Property solely for lawful purposes.
10. Severability. If any clause, sentence or any other portion of the terms and conditions of this Agreement becomes illegal, null or void for any reason, the remaining portions will remain in full force and effect to the fullest extent permitted by law.
11. Entire Agreement. This Agreement and the exhibits and attachments hereto are the entire agreement between the Parties on the subject matter hereof. There is no other oral or written agreement between the Parties with regard to this subject matter. There are no representations or warranties made by either party, implied or express, other than those contained in this Agreement.
12. Exhibits. Each exhibit referred to and attached to this Agreement is incorporated into the Agreement.
13. Amendments and Modifications. Any modifications to this Agreement must be made in writing and executed by all parties. Amendments and modifications must be approved by the governing body of each party prior to execution.
14. Successors and Assigns. Subject to the provisions of Section 8, the benefits conferred by this Agreement, and the obligations assumed thereunder, shall inure to the benefit of and bind the successors and permitted assigns of the Parties.
15. No Partnership. Nothing contained in this Agreement or any acts of the parties hereby shall be deemed or construed by the parties, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or any association between any of the parties other than that of independent contracting parties.
16. Non-waiver of Government Rights. Subject to the terms and conditions of this Agreement, by making this Agreement, the City and the Agency are each specifically not obligating itself, or any other agency with respect to any discretionary action relating to development or operation of the improvements to be constructed on the Property,

including, but not limited to, rezoning, variances, environmental clearances or any other governmental approvals which are or may be required, except as expressly set forth herein.

- 17. Time of Essence. Time is of the essence of this Agreement.
- 18. Assignment. Marathon or the Marshall Trust may assign their rights and obligations under this Agreement to an entity holding title to the Property provided that entity is controlled by the principals of Marathon.
- 19. No Third-party Beneficiary Rights. Other than stated herein, no person not a party to this Agreement is an intended beneficiary of this Agreement, and no person not a party to this Agreement shall have any right to enforce any term of this Agreement.

MARATHON ACQUISITION AND DEVELOPMENT, INC.

By: _____

Its: _____

Date: _____

CITY OF LEBANON

By: _____

Its: _____

Date: _____

**KENNETH G. MARSHAL
401(k) PROFIT SHARING PLAN**

By: _____

Its: _____

Date: _____

**URBAN RENEWAL AGENCY OF
THE CITY OF LEBANON**

By: _____

Its: _____

Date: _____

**McKinney Lane Apartments
Off-Site Improvements Budget
March 5, 2012**

MCKINNEY LANE STREET IMPROVEMENTS

<u>Streets</u>	<u>UNITS</u>	<u>QUANTITY</u>	<u>UNIT COST</u>	<u>TOTAL COST</u>
Mobilization	LS	1	\$20,000.00	\$ 20,000.00
Clear and grub	LS	1	\$7,500.00	\$ 7,500.00
Excavation street (Hauled from site)	CY	1080	\$11.00	\$ 11,880.00
Over Excavation/Stabilization	CY	50	\$40.00	\$ 2,000.00
Geotextile fabric	SY	1960	\$1.00	\$ 1,960.00
Baserock	TON	1120	\$18.00	\$ 20,160.00
4" of Asphalt	TON	376	\$85.00	\$ 31,960.00
Oversized Curb Inlet	EA	3	\$1,900.00	\$ 5,700.00
Curb and Gutter w/rock under	LF	625	\$11.50	\$ 7,187.50
Sidewalk w/rock under	SF	2776	\$3.50	\$ 9,716.00
Driveways w/rock under	SF	576	\$6.00	\$ 3,456.00
Striping and signage	LS	1	\$2,500.00	\$ 2,500.00
Erosion control	LS	1	\$6,000.00	\$ 6,000.00
Street Tree	EA	21	\$350.00	\$ 7,350.00
Street Lights	EA	2	\$2,000.00	\$ 4,000.00
Franchised Utility Conduits	LF	655	\$15.00	\$ 9,825.00
			Subtotal	\$ 151,194.50
<u>Sanitary Sewer</u>				
8" Sanitary Sewer	LF	676	\$42.00	\$ 28,392.00
6" Sanitary Sewer	LF	175	\$40.00	\$ 7,000.00
48" Sanitary Sewer MH	EA	2	\$2,800.00	\$ 5,600.00
6" Sanitary Sewer Clean-out	EA	5	\$300.00	\$ 1,500.00
			Subtotal	\$ 42,492.00
<u>Storm Drain</u>				
Storm Drain Mainline (Ductile)	LF	327	\$65.00	\$ 21,255.00
Storm Drain Mainline (PVC)	LF	336	\$50.00	\$ 16,800.00
Storm Drain Lateral	LF	119	\$52.00	\$ 6,188.00
Storm Catch Basins	EA	3	\$1,250.00	\$ 3,750.00
8" Storm Culvert	LF	80	\$30.00	\$ 2,400.00
48" Storm Drain MH	EA	4	\$2,600.00	\$ 10,400.00
			Subtotal	\$ 60,793.00
<u>Water</u>				
8" DI Watermain	LF	675	\$52.00	\$ 35,100.00
6" Gate Valve	EA	2	\$750.00	\$ 1,500.00
2" Copper Water Service	LF	25	\$25.00	\$ 625.00
Meter Box and Curb Stop	EA	5	\$425.00	\$ 2,125.00
Fire Hydrant	EA	2	\$3,200.00	\$ 6,400.00
2" Blow Off	EA	1	\$700.00	\$ 700.00
6" DI Fire Water	LF	10	\$70.00	\$ 700.00
			Subtotal	\$ 47,150.00
McKinney Lane Improvements Total				\$ 301,629.50

**McKinney Lane Apartments
Off-Site Improvements Budget
March 5, 2012**

RUSSELL DRIVE WATER & SEWER IMPROVEMENTS

Streets

	UNITS	QUANTITY	UNIT COST	TOTAL COST
Mobilization	LF	1	\$5,000.00	\$5,000.00
Sawcut existing AC	LS	1	\$4,500.00	\$4,500.00
4" AC Trench Patch	TON	198	\$85.00	\$16,830.00
2" AC Shoulder Widening	TON	42	\$85.00	\$3,570.00
Shoulder Widening Prep Work	LS	1	\$2,500.00	\$2,500.00
2" AC Overlay	TON	465	\$85.00	\$39,525.00
Subtotal			\$71,925.00	

Sanitary Sewer

Connection to Existing	EA	1	\$1,000.00	\$1,000.00
12" Sanitary Sewer	LF	996	\$68.00	\$67,728.00
12" Sanitary Sewer Clean Out	EA	1	\$500.00	\$500.00
48" Sewer Manhole	EA	3	\$3,200.00	\$9,600.00
Subtotal			\$78,828.00	

Water

Connection to existing	EA	1	\$1,000.00	\$1,000.00
12" Waterline	LF	1090	\$84.00	\$91,560.00
12" Butterfly Valve	EA	4	\$1,000.00	\$4,000.00
8" Waterline	LF	60	\$52.00	\$3,120.00
8" Gate Valve	EA	4	\$900.00	\$3,600.00
4" Blow-off assembly	EA	1	\$900.00	\$900.00
2" Blow-off assembly	EA	4	\$750.00	\$3,000.00
Fire hydrant assembly	EA	2	\$3,200.00	\$6,400.00
Subtotal			\$ 113,580.00	

Russell Drive Improvements Total

\$264,333.00

BADGER PROPERTY STORM SYSTEM IMPROVEMENTS

Storm System Improvements

Twin 24" Culverts w/Rock Backfill	LF	40	\$152.00	\$ 6,080.00
Twin 24" Culverts w/Native Backfill	LF	40	\$141.00	\$ 5,640.00
Twin 24" Culverts Under Road	LF	45	\$199.11	\$ 8,960.00

Badger Storm Improvements Total

\$ 20,680.00

**McKinney Lane Apartments
Off-Site Improvements Budget
March 5, 2012**

WETLAND PERMITTING/MITIGATION

Wetland Consulting and Permit Preparation	\$ 3,200.00
Wetland Permit Fee	\$ 2,000.00
Wetland Mitigation Credits	\$ 2,000.00

Wetland Mitigation Total \$ 7,200.00

CIVIL ENGINEERING FOR ALL OFF-SITE IMPROVEMENTS

Off-Site Improvements Civil Engineering and Surveying	\$ 59,150.00
Includes New Fees of \$10,500 in Wetland Engineering/Surveying	
Includes New Fees of \$4,200 Designing Russell Drive Frontage	

GENERAL CONTRACTOR COSTS

Bond	\$ 20,000.00
Payroll	\$ 36,500.00
Payroll Taxes	\$ 3,500.00

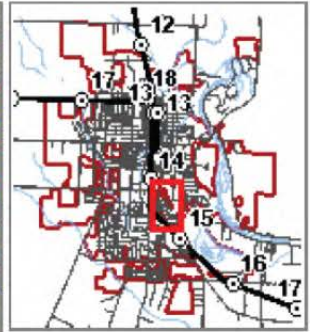
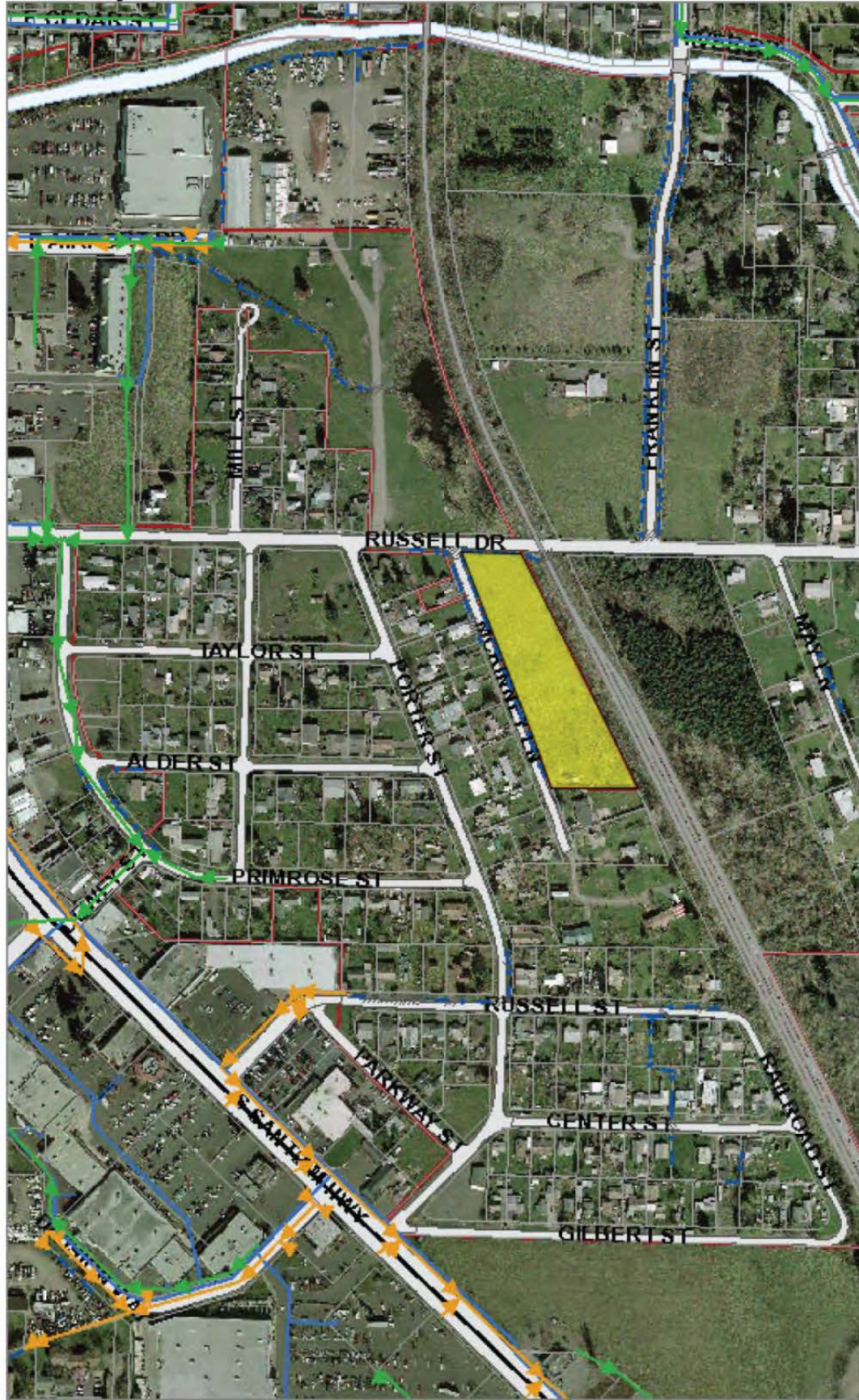
General Contractor Costs Total \$ 60,000.00

CONTINGENCY FOR ALL OFF-SITE IMPROVEMENTS

7.5% Contingency	\$ 53,474.44
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TOTAL OFF SITE IMPROVEMENTS COSTS \$ 766,466.94

McKinney Lane



Legend

- Sanitary Mains**
- Combined
 - ForceMain
 - GravityMain
 - StubOut

Storm Lines

- Culvert
- Main
- StubOut
- - - UnderDrain

Water Lines

- Main Line
- Service Line
- Non-Potable Main Line
- Non-Potable Service Line



Approx. Scale 1:4,927
1 in = 411 ft

Coordinate System: State Plane OR North
 Horizontal Datum: NAD 83/91 (HARN)
 Vertical Datum: NAVD88
 Aerial Photo: March 2005



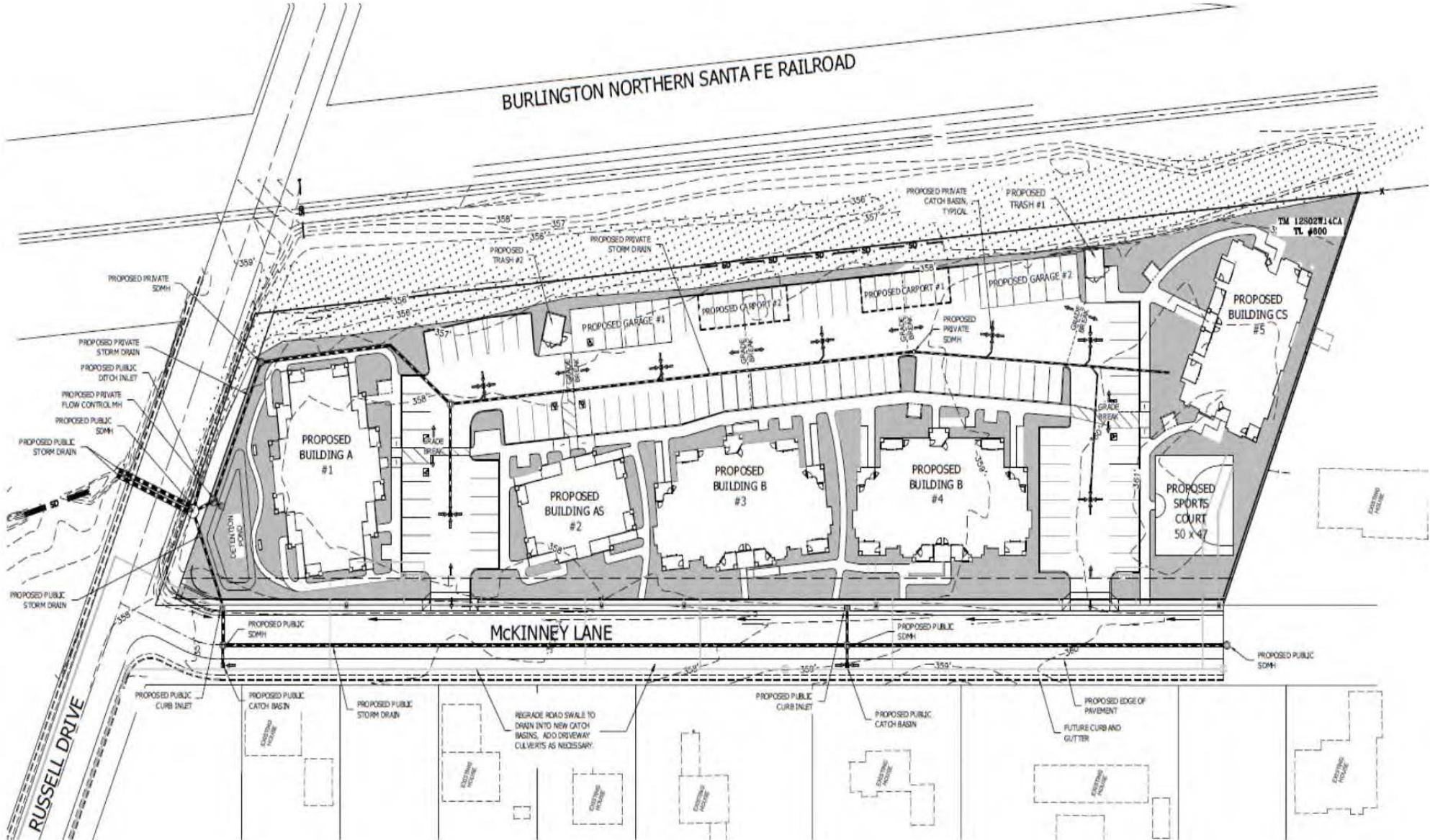
Comments:

This map is for informational purposes only. The City of Lebanon makes no representations as to the accuracy, completeness and timeliness of the information displayed.

SIMILAR TO:



BURLINGTON NORTHERN SANTA FE RAILROAD



PROPOSED BUILDING A #1

PROPOSED BUILDING AS #2

PROPOSED BUILDING B #3

PROPOSED BUILDING B #4

PROPOSED BUILDING CS #5

PROPOSED SPORTS COURT 50 x 47

McKINNEY LANE

RUSSELL DRIVE

TM 1280214 CA
TL #800

REGRADE ROAD SWALE TO DRAIN INTO NEW CATCH BASINS, ADD DRIVEWAY CULVERTS AS NECESSARY.

FUTURE CURB AND GUTTER

Agenda Item 3



MEMORANDUM

Public Works Department

To: Mayor Ken Toomb, City Councilors, and
John Hitt, City Manager

Date: March 5, 2012

From: Daniel Grassick, PE, General Manager Utility Services

Subject: Northwest Urban Renewal Area Proposed Adjustments

For discussion only: Staff requests Council input and guidance on a proposed substantial amendment to the Northwest Lebanon Urban Renewal Area plan that would modify the boundary, add associated public infrastructure projects and adjust the maximum indebtedness limit. Additional information will be provided during the Council presentation.

DISCUSSION:

The Northwest Lebanon Urban Renewal Area (NWLURA) was created in 1989 (map attached) as a means to help fund the extension and construction of public infrastructure needed to support the potential growth and development of industrial lands in the northwest quadrant of the City. A major amendment to the plan and report was adopted by Council in 1998 to make the plan consistent with the provisions of Measure 50 as it applied to tax increment financing. The amendment created a special taxing levy that applied to the entire incorporated area of the City to insure adequate revenues were available to pay for any bond debt service expenses and also established an upper limit or 'maximum indebtedness' amount that the NWLURA could incur.

Numerous infrastructure projects were completed between 1989 and 2007 including the Westside sewer interceptor from the treatment plant to Highway 34, Reeves Parkway, Hansard, Harrison, and 12th Street projects, 5th Street from Reeves to Mary, associated storm drain improvements and pedestrian and bike pathway facilities. Major industry located in the NWLURA includes Lowes distribution warehouse, Pennington Seed, ENTEK, Linn Gear and Laticrete.

The NWLURA plan includes many other potential infrastructure projects including a pro-rated share of a new water treatment plant, new water storage reservoirs, upgrades to the wastewater treatment plant and other internal street, waterline and drainage improvements. Given the projects completed to date within the NWLURA and the existing infrastructure project need in the area immediately adjacent to the NWLURA southern boundary, staff has prepared a proposal for Council consideration to expand both the boundary and potential project list. This modification is intended to be very specific and focused in both boundary area and projects.

Proposed Boundary Adjustment: (map attached)

To facilitate the street and underground utility rehabilitation and construction, the NWLURA boundary is proposed to extend between the street right of way lines south on 12th Street to Sherman, west on Sherman to Airway, south on Airway to Oak, include Oak Street from Williams Street on the east to the former Pace America property on the west, south on Airway to Airport, and include the industrial property at the former Pace America site.

Proposed Project List Adjustment:

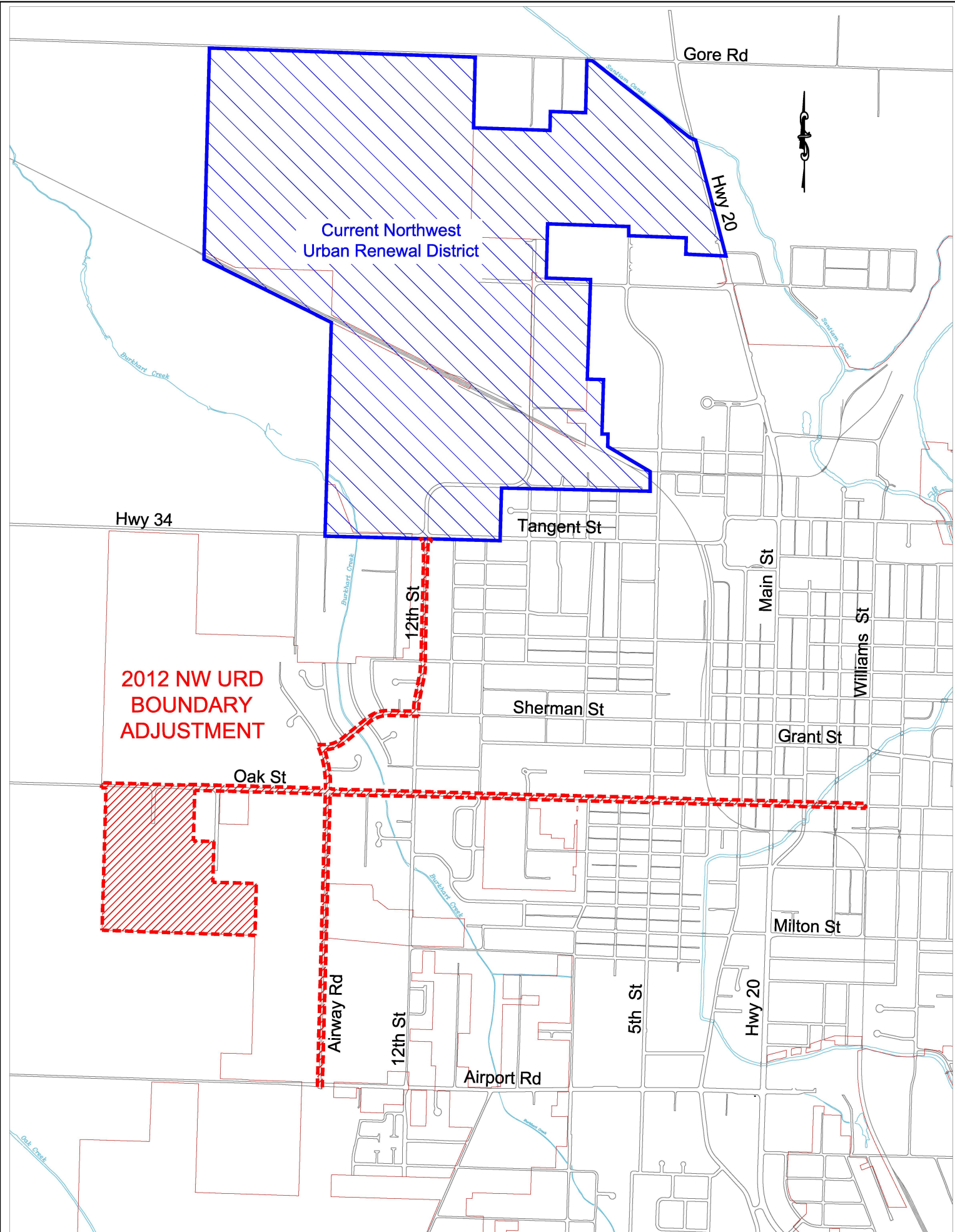
Except for the former Pace America site, proposed projects focus on street and utility needs. Costs for the additional proposed projects total approximately \$12 million. However, after accounting for existing debt, staff anticipates approximately \$8.8 million of bond capacity would be available for new projects. First priority would be \$5 million for a new water storage reservoir and design of the new water treatment facility. This will help reduce the water rate adjustment scheduled for FY 2014. Next would be up to \$1 million to be made available for rehabilitation/remodeling of the Pace America building to facilitate redevelopment. Remaining funds would be allocated among projects for underground utilities and street surface rehabilitation along the street corridors outlined previously.

Modification Process:

Modifying the NWLURA to accomplish the proposed projects will require an amendment to the existing NWLURA plan. In accordance with the governing Oregon Revised Statutes (ORS 457) for urban renewal districts, this amendment would include adjustment of the boundary, addition of new projects within the modified boundary, and adjustment of the maximum indebtedness by 20 percent. The concept would first be presented to the planning commission at a public hearing followed by a public hearing with the Lebanon Urban Renewal Agency.

One potential benefit of the amendment would be the elimination of the special tax levy that was implemented in 1998. Staff estimates that the typical residential property owner could possibly see their property tax bill reduced by as much as \$1.50 up to \$2 per \$1000 of valuation. If Council decides to move ahead with the proposed amendment, timing of the action could be important. If the amendment is adopted by Ordinance before July 1 this year, the special levy would be terminated for the current 2012 property tax year. If action is delayed past July 1, the special levy would remain in effect until tax year 2013.

With Council concurrence staff will prepare a draft NWLURA amendment and schedule the appropriate public hearings.



Current Northwest Urban Renewal District

2012 NW URD BOUNDARY ADJUSTMENT

City of Lebanon Urban Renewal Districts
 Proposed URD - **BROWN**: 80.70 ac

Agenda Item 4



MEMORANDUM

Utility & Engineering Services

To: Mayor and City Council

Date: March 5, 2012

From: Dan Grassick, Utility and Engineering Services Manager

Subject: 2012 Local Government Grant

REQUEST

Staff is requesting Council to consider approving a Resolution allowing the City of Lebanon to apply for a Local Government Grant through the Oregon Parks and Recreation Department for the continuing development of a soccer park on City-owned property near Cheadle Lake. The deadline for applications to be received is Friday, April 6, 2012.

BACKGROUND

The City of Lebanon has entered into a Mutual Agreement of Understanding with the American Youth Soccer Organization (AYSO) to develop a soccer park on approximately six acres of City-owned property along the southeast end of Cheadle Lake. This project received land use approval on September 24, 2010. Improvements made by AYSO thus far include grading and seeding, and construction of a parking area.

Through donations and fundraising, AYSO has acquired funds to install an irrigation and drainage system, and a pathway along the soccer park that will align with and eventually connect to the Cheadle Lake North Shore Couplet Trail that is currently under construction.

Staff is prepared to proceed with the LGGP grant application upon City Council approval of the attached Resolution at the Council meeting on March 14, 2012.

DG/jb

**A RESOLUTION AUTHORIZING THE CITY OF) RESOLUTION NO. 2012-5
LEBANON TO APPLY FOR AN OREGON PARKS)
& RECREATION LOCAL GOVERNMENT GRANT)
FOR DEVELOPING A SOCCER PARK ON)
CITY-OWNED PROPERTY AT CHEADLE LAKE)**

WHEREAS, the Oregon Parks and Recreation Department is accepting applications for the Local Government Grant Program; and

WHEREAS, the City of Lebanon desires to participate in this grant program to the greatest extent possible as a means of providing needed parks and recreations, improvements, and enhancements;

WHEREAS, the American Youth Soccer Organization (AYSO) and the City of Lebanon has entered into a Mutual Agreement of Understanding for the development of a soccer park on approximately six acres of City-owned property at the southeast end of Cheadle Lake.

WHEREAS, this project has received land use approval.

WHEREAS, the City hereby certifies that the matching share for this application has been raised by AYSO and is readily available at this time.

**NOW, THEREFORE, THE CITY OF LEBANON, LINN COUNTY, OREGON,
DOES RESOLVE AS FOLLOWS:**

Section 1: The City of Lebanon is authorized to apply for a Local Government Grant from the Oregon Parks and Recreation Department for the development a soccer park on City-owned property at Cheadle Lake.

Section 2: This resolution is effective immediately upon passage.

Adopted by the Lebanon City Council and executed on the 14th day of March, 2012, with ____ Yeas, and ____ Nays.

CITY COUNCIL OF LEBANON, OREGON

Kenneth I. Toomb, Mayor
Bob Elliott, Council President

Attested by:

Linda Kaser, City Clerk/Reorder

Agenda Item 5



Administration

City Clerk/Recorder

MEMORANDUM

To: Mayor Toomb and City Council **Date:** March 7, 2012
From: John Hitt, City Manager
Subject: Extended Enterprise Zone Tax Abatement

Like many others in the past, this proposed resolution is to obtain City of Lebanon approval for extended property tax abatement. This request comes from Oregon Freeze Dry of Albany, Oregon.

Although the area where Oregon Freeze Dry is located is part of the South Santiam Enterprise Zone, granting this request will have no impact to City of Lebanon tax revenues. Therefore, staff recommends approval of the resolution.

ACTION REQUIRED:

Move to approve/deny Resolution 2012-6 as written.

/lgk



Memo

Date: November 1, 2011

To: South Santiam Enterprise Zone Co-Sponsors
Linn County, City of Albany, City of Lebanon, City of Millersburg

From: John Pascone, President

Subject: Request for Approval: Oregon Freeze Dry
Agreement for Extended Enterprise Zone Benefits

Reason for Request

Oregon Freeze Dry has submitted an Enterprise Zone Authorization Application and has requested Extended Benefits beyond the regular three year tax exemption. Regulations require that the company enter into an Agreement with the city and other enterprise zone sponsors. In order to qualify for the additional two years, the company must pay 150% of Linn County's Average Annual Wage to the new employees.

Description of Project

The project has two phases estimated to cost \$8.5 million which includes \$4.5 million for a new building and existing building improvements and \$4 million for machinery and equipment. The investment will increase manufacturing capacity and allow for future expansion in the pharmaceutical industry, an industry that the company is currently serving.

The projected number of new jobs created with this new investment is 40 and hopefully more.

The approval of all co-sponsors is needed; the City of Albany will sign the Agreement.

Thank you for your support.

**A RESOLUTION APPROVING AN EXTENDED)
PROPERTY TAX ABATEMENT AGREEMENT)
BETWEEN THE CITY OF ALBANY, A)
COSPONSOR OF THE SOUTH SANTIAM)
ENTERPRISE ZONE AND OREGON FREEZE DRY)**

RESOLUTION NO. 2012-6

WHEREAS, Oregon Freeze Dry is building a building and investing in equipment; and

WHEREAS, Oregon Freeze Dry intends to add 40 new employees; and

WHEREAS, Oregon Freeze Dry anticipates providing average pay and benefits to these employees equal to or greater than 150% of the Linn County average, as required under ORS 285C.160; and

WHEREAS, Oregon Freeze Dry, which is located in the City of Albany, has applied to extend the property tax abatement for which it qualifies through its inclusion in the South Santiam Enterprise Zone; and

WHEREAS, the City of Albany has requested support of this agreement from the other cosponsors of the South Santiam Enterprise Zone; and

WHEREAS, the City of Lebanon is a cosponsor of the South Santiam Enterprise Zone.

NOW, THEREFORE BE IT RESOLVED that the attached Extended Abatement Agreement is hereby approved by the Lebanon City Council and executed by the Mayor on this 14th day of March, 2012 with ____ Yeas and ____ Nays.

CITY COUNCIL OF LEBANON, OREGON

Kenneth I. Toomb, Mayor
Bob Elliott, Council President

ATTEST:

Linda Kaser, City Clerk/Recorder

Agreement for Oregon Enterprise Zone Extended Abatement

AGREEMENT WITH THE SOUTH SANTIAM ENTERPRISE ZONE SPONSORS TO EXTEND PROPERTY TAX EXEMPTION TO FIVE CONSECUTIVE YEARS IN TOTAL FOR CAPITAL INVESTMENT BY Oregon Freeze Dry

The sponsors of the South Santiam Enterprise Zone comprising the governing bodies of the Cities of Albany, Lebanon, Millersburg and Linn County (hereinafter "The Zone Sponsor") and Oregon Freeze Dry (hereinafter "The Firm") do hereby enter into an agreement for extending the period of time in which The Firm shall receive an exemption on its investment in qualified property in the South Santiam Enterprise Zone contingent on certain special requirements, under ORS 285C.160 (2003).

The Zone Sponsor and The Firm jointly acknowledge: that subject to submission and approval of an application for authorization and the satisfaction of other requirements under ORS 285C.050 to 285C.250, The Firm is eligible for three years of complete exemption on its qualified property; that nothing in this agreement shall modify or infringe on this three-year exemption or the requirements thereof, and that this agreement becomes null and void if The Firm does not qualify for these three years of the exemption.

The Zone Sponsor extends The Firm's property tax exemption an additional two years on all property that initially qualifies in the South Santiam Enterprise Zone in the assessment year beginning on January 1, 2012 and, thus, sets a total period of exemption of five consecutive years during which statutory requirements for the standard three-year enterprise zone exemption must also be satisfied and maintained.

CONFIRMATION OF STATUTORY PROVISIONS

In order to receive the additional two years of enterprise zone exemption granted herein, The Firm agrees herewith under 285C.160(3)(a)(A) that for each year of the entire exemption period, all of The Firm's new employees shall receive an average level of compensation equal to or greater than 150 percent of the county average annual wage, in accordance with the specific definitions and guidelines in Oregon Administrative Rules (OAR), Chapter 123, Division 65 (123-065-41##), which provides that:

1. Such compensation may include non-mandatory benefits that can be monetized;
2. The county average annual wage is set at the time of authorization, except as pursuant to ORS 285C.160(4), according to the 2009 Linn County average annual wage rate of \$34,826 for which 150 percent equals \$52,240.

3. Only employees working at jobs filled for the first time after the application for authorization but by December 31 of the first full year of the initial exemption and performed within the current boundaries of the South Santiam Enterprise Zone are counted; and

4. Only full-time, year-round and non-temporary employees engaged a majority of their time in The Firm's eligible operations consistent with ORS 285C.135 & 285C.200(3) are counted, regardless if such employees are leased, contracted for or otherwise obtained through an external agency or are employed directly by The Firm.

LOCAL ADDITIONAL REQUIREMENTS

For The Firm to receive the additional two years of enterprise zone exemption granted herein, The Zone Co-Sponsors and The Firm agree that there are no additional requirements, in addition to statutory requirements under ORS 285C.160(a)(B).

ACCEPTING FOR THE CITY OF ALBANY, A ZONE SPONSOR OF THE SOUTH SANTIAM ENTERPRISE ZONE:

ACCEPTING FOR Oregon Freeze Dry:

The other Zone Sponsors; City of Millersburg, City of Lebanon and Linn County approve this Agreement by passing separate Resolutions. Copies of which are attached.

Agenda Item 6



MEMORANDUM
Administration Department

To: Mayor and City Council
From: John Hitt, City Manager
Subject: LMC 3.04 Public Contracting

Date: March 6, 2012

Attached is an ordinance that would revise Lebanon Municipal Code 3.04.

These revisions are in accordance with the presentation of the City Attorney at the February 9, 2012, City Council meeting. They are also in conformance with the recommendation of the committee who met to review the existing ordinance.

Staff recommends your approval.

JEH/jb

A BILL FOR AN ORDINANCE AMENDING) **Ordinance Bill No. 2012-3**
CERTAIN SECTIONS IN CHAPTER 3.04 –)
"PUBLIC CONTRACTS" OF THE LEBANON)
MUNICIPAL CODE) **Ordinance No.: 2831**

NOW, THEREFORE, THE CITY OF LEBANON ORDAINS AS FOLLOWS:

Section 1. Lebanon Municipal Code Section 3.04.010 “City Council Designated as Local Contract Review Board” is hereby amended as follows:

3.04.010 City Council Designated as Local Contract Review Board

The Lebanon city council is designated as the local contract review board under the state of Oregon Public Contracting Code. The contract review board may, from time to time, delegate its powers and responsibilities consistent with the Oregon Public Contracting Code, the Model Rules, or the Lebanon Municipal Code. The City Manager (Administrator), or his or her designated purchasing agent, is designated as the city's "contracting agency" for purposes of contracting powers and duties assigned to the city of Lebanon as a "contracting agency" under the state of Oregon Public Contracting Code or the Model Rules. The City Manager (Administrator) shall cause a review of all contracts no later than six months prior to the contracts' scheduled termination. The purpose of the review shall be to evaluate the performance of the contractor and make any appropriate recommendations to the city council concerning the contract.

Section 2. Lebanon Municipal Code Section 3.04.030 “Public Contracts Exempt from Competitive Procurement” is hereby amended as follows:

3.04.030 Public Contracts Exempt from Competitive Procurement

The following classes of public contracts are exempted from competitive procurement:

- A. Any contract exempted by the state of Oregon Public Contracting Code or Model Rules;
- B. Change orders or contract amendments that are reasonably related to the scope of work under the original contract, up to seventy-five thousand dollars (\$75,000). Change orders or other amendments that increase the initial price of the contract by more than seventy-five thousand dollars (\$75,000) must be separately approved by the contract review board.
- C. Contracts for the purchase of computer equipment and software, which may be by requests for quotations, under the procedures in Lebanon Municipal Code Section 1.555(a) and (b).
- D. Purchases through federal programs, pursuant to ORS 279A.180.
- E. An emergency contract, provided that the contracting agency adheres to the requirements of ORS 279B.080 or 279C.335(5) and the Model Rules.

- F. Any other contract (including sole source and brand name specification contracts) where the public interest would be promoted by exempting the contract from the competitive bidding process, provided that the contract review board adheres to the Public Contracting Code and the Model Rules in making the exemption.

Section 3. Lebanon Municipal Code Section 3.04.040 “Authority of City Manager (Administrator)” is hereby amended as follows:

3.04.040 Authority of City Manager (Administrator)

Administrative staff and departments have contracting authority and responsibilities as follows:

- A. The City Manager (Administrator) (or designee) is authorized to:
 - 1. Enter into city contracts not to exceed seventy-five thousand dollars (\$75,000) without additional authorization of the contract review board;
 - 2. Recommend that the contract review board approve or disapprove contract awards in excess of seventy-five thousand dollars (\$75,000), or change orders or amendments to contracts of more than seventy-five thousand dollars (\$75,000);
 - 3. Consistent with the Lebanon Municipal Code, adopt forms, computer software, procedures, and administrative policies or administrative rules for all city purchases; and
 - 4. Enter into contracts or permits for local concessions and street vendors (pursuant to applicable city policy) where the annual amount to be paid to or by the city is not expected to exceed seventy-five thousand dollars (\$75,000) per year.
- B. Purchases of goods from city employees shall require authorization of the City Manager (Administrator) or designee. Provision of services by city personnel shall be in accordance with the city personnel policies and other applicable law.
- C. All contracting by departments shall be according to approved city purchasing procedures adopted by the contracting agency or the contract review board.
- D. Each department shall operate within its budget, or seek supplemental budgetary authority from city council with respect to the contract.
- E. Each department shall plan purchase requirements sufficiently in advance so that orders can be placed in economical quantities.
- F. The City Manager (Administrator) or designee shall process requisition forms and negotiate purchases on the most favorable terms in accordance with adopted ordinances, state laws, policies and procedures.

Section 4. Lebanon Municipal Code Section 3.04.060 “Public Improvement Contracts less than \$75,000” is hereby amended as follows:

3.04.060 Public Improvement Contracts less than \$75,000

Public improvement contracts estimated by the contracting agency not to exceed seventy-five thousand dollars (\$75,000) may be let by competitive quote under the following procedures:

- A. The contracting agency shall informally solicit at least three price quotes from prospective contractors. If three prospective contractors are not available, then fewer quotes may be solicited, and the contracting agency shall maintain records of the attempts to obtain quotes.
- B. The contracting agency shall award the contract to the prospective contractor whose quote will best serve the interests of the city of Lebanon, taking into account price and other applicable factors, such as experience, specific expertise, availability, project understanding, contractor capacity, and contractor responsibility. If the contract is not awarded on the basis of the lowest price, the contracting agency shall make a written record of the basis for the award.
- C. A procurement may not be artificially divided or fragmented to qualify for the informal contract award procedures provided by this section.
- D. A public improvement contract let under this section may be amended by change order as provided in Section 3.04.040(A)(2) of this chapter.
- E. Public improvement contracts in excess of seventy-five thousand dollars (\$75,000) shall be let in accordance with the provisions of ORS 279C.

Section 5. Lebanon Municipal Code Section 3.04.070 “Personal Services Contracts” is hereby amended as follows:

3.04.070 Personal Services Contracts

Personal services contracts (other than personal services contracts for architectural or engineering services), are subject to the rules established by this section:

- A. Personal service contracts will be used to retain the services of independent contractors, other than architects or engineers. Nothing in this section shall apply to the employment of regular city employees.
- B. Unless otherwise approved by the City Manager (Administrator), all personal service contracts shall require the contractor to defend, indemnify, and hold harmless the city, its officers, agents and employees against and from any and all claims or demands for damages of any kind arising out of or connected in any way with the contractor's performance thereunder and shall include a waiver of contractor's right to ORS 30.285 and ORS 30.287 indemnification and defense.
- C. Unless otherwise approved by the City Manager (Administrator), city personal service contracts shall contain a provision requiring the person or entity

providing the service to obtain and maintain liability insurance coverage in at least the amount of the city's tort liability limits, naming the city as an additional named insured, during the life of the contract.

- D. All city personal service contracts shall contain all contract provisions mandated by state law. These provisions may be incorporated in the personal service contract by reference to state law, unless state law provides otherwise. The city attorney's office will prepare model contract provisions for use in city personal service contracts.
- E. The following procedure shall be observed in the selection of personal service contractors:
 - 1. For personal service contracts involving an anticipated fee of seventy-five thousand dollars (\$75,000) or less per annum, the City Manager (Administrator) or his or her designated officer may negotiate a contract for such services with any qualified contractor of his or her selection.
 - 2. For personal service contracts involving an anticipated fee of more than seventy-five thousand dollars (\$75,000) per annum, the City Manager (Administrator) or his or her designated officer shall solicit at least three prospective contractors who shall appear to have at least minimum qualifications for the proposed assignment, notify each prospective contractor in reasonable detail of the proposed assignment, and determine the prospective contractor's interest and ability to perform the proposed assignment. In the event that the City Manager (Administrator) or the designee cannot procure at least three prospective contractors, the selection process may proceed, but the City Manager (Administrator) shall document the reasons why three contractors have not been successfully solicited;
 - 3. The City Manager (Administrator) or his or her designated officer may arrange for any or all interested prospective contractors to be interviewed for the assignment by an appropriate city employee or by an interview committee;
 - 4. Following a review of the qualifications and interview, where conducted, of the interested prospective contractors, the City Manager (Administrator) or his or her designated officer shall select the prospective contractor, and shall prepare a personal service contract.
- F. The above provisions regarding selection procedures do not apply to amendments, modifications or supplements to executed personal service contracts.
- G. The following criteria shall be considered in the evaluation and selection of a personal service contractor:
 - 1. Specialized experience in the type of work to be performed;
 - 2. Capacity and capability to perform the work, including any specialized services within the time limitations for the work;

3. Educational and professional record, including past record of performance on contracts with governmental agencies and private parties with respect to cost control, quality of work, ability to meet schedules, and contract administration, where applicable;
 4. Availability to perform the assignment and familiarity with the area in which the specific work is located, including knowledge of design or techniques peculiar to it, where applicable; and
 5. Any other factors relevant to the particular contract.
- H. The selection procedures described in this section may be waived by the City Manager (Administrator), at his or her discretion where an emergency exists that could not have been reasonably foreseen and requires such prompt execution of a contract to remedy the situation that there is not sufficient time to permit utilization of the selection procedures.
- I. The City Manager (Administrator) is delegated the authority to sign all personal service contracts.
- J. Nothing contained in this section shall preclude the city from complying with provisions of federal or state law that require the city to utilize a different selection or contracting procedure.

Section 6. Lebanon Municipal Code Section 3.04.075 "Selection of Consultants for Architectural, Engineering Services, Land Surveying and Related Services" is hereby amended as follows:

3.04.075 Selection of Consultants for Architectural, Engineering Services, Land Surveying and Related Services

- A. Subject to state law, the selection of a candidate to perform consulting architectural, engineering, land surveying or related services for the city shall be within the sole discretion of the city, and may be adjusted to accommodate the project's scope, schedule and budget objectives for a particular project. Adjustments to accommodate the city's objectives may include provision for the direct appointment of a consultant if the value of the project does not exceed the threshold amount of seventy-five thousand dollars (\$75,000). Screening and selection procedures may include a consideration of each candidate's:
1. Specialized experience, capabilities and technical competence that may be demonstrated by the proposed approach and methodology to meet the project requirements;
 2. Resources available to perform the work and the proportion of the candidate staff's time that would be spent on the project, including any specialized services, within the applicable time limits;
 3. Record of past performance, including but not limited to price and cost data from previous projects, quality of work, ability to meet schedules, cost control and contract administration;

4. Ownership status and employment practices regarding minority, women and emerging small businesses or historically underutilized businesses;
 5. Availability to the project locale;
 6. Familiarity with the project locale; and
 7. Proposed project management techniques.
- B. If the screening and selection procedures created in this section result in the determination by the City Manager (Administrator) or his designate that two or more candidates are equally qualified, the city may select a candidate through any process adopted by the City Manager (Administrator).
- C. The City Manager (Administrator) or his designate and the selected candidate shall mutually discuss and refine the scope of services for the project and shall negotiate conditions, including but not limited to compensation level and performance schedule, based on the scope of services. The compensation level paid must be reasonable and fair to the city as determined solely by the city. Authority to negotiate a contract under this section does not supersede any provision of state law.
- D. If the city and the selected candidate are unable for any reason to negotiate a contract at a compensation level that is reasonable and fair to the city, the city shall, either orally or in writing, formally terminate negotiations with the selected candidate. The City Manager (Administrator) or his designate may then negotiate with another candidate. The negotiation process may continue in this manner through successive candidates until an agreement is reached or the city terminates the consultant contracting process.
- E. For the purposes of this section, the following definitions apply:
1. "Architect" means a person who is registered and holds a valid certificate in the practice of architecture in the state of Oregon, and includes, without limitation, the terms "architect," "licensed architect" and "registered architect."
 2. "Engineer" means a person who is registered and holds a valid certificate in the practice of engineering in the state of Oregon.
 3. "Land surveyor" means a person who is registered and holds a valid certificate in the practice of land surveying in the State of Oregon.
 4. "Personal services" mean the services of a person or persons that are designated by the city's contract review board as personal services. "Personal services" includes architectural, engineering, land surveying and related services procured under this chapter.
 5. "Related services" means personal services, other than architectural, engineering and land surveying services, that are related to the planning, design, engineering or oversight of public improvement projects or components thereof, including but not limited to, landscape architectural

services, facilities planning services, energy planning services, space planning services, environmental impact studies, hazardous substances or hazardous waste or toxic substances testing services, wetland delineation studies, wetland mitigation studies, Native American studies, historical research services, endangered species studies, rare plant studies, biological services, archaeological services, cost estimating services, appraising services, material testing services, mechanical system balancing services, commissioning services, project management services, construction management services and owner's representative services or land-use planning services.

Section 7. Lebanon Municipal Code Section 3.04.080 “Disposition of Surplus Personal Property” is hereby amended as follows:

3.04.080 Disposition of Surplus Personal Property

Disposition of surplus personal property may be made, at the discretion of the City Manager (Administrator) or his/her designee, under provisions of the State of Oregon Public Contracting Code, or the Model Rules, or under the provisions of this section;

- A. From time to time and after personal property owned by the city of Lebanon is determined by the City Manager (Administrator) or his/her designee to be surplus to the needs of the city, the city may sell the property at public auction. The city may utilize a contracting firm, approved by the contract review board, for disposition of the property on terms and conditions contained in a contract approved by the contract review board. The city shall give notice of the public auction by posting notice of the means by which the property will be disposed of on the city of Lebanon internet website, or by advertisement in a newspaper of general circulation. However, if the city manager shall determine that other disposition is beneficial to the city, he or she may make such finding and, with the approval of the contract review board, dispose of such items through donation, state surplus, or other method determined to be in the best interests of the city.
- B. Auction sales may be conducted entirely on the internet. Sale shall be for cash to the highest bidder. All proceeds of the sale shall be paid to the city's general fund, subject to the terms and conditions of the contract (if any) approved by the contract review board between the city of Lebanon and a firm selected to conduct the auction.
- C. All personal property sold pursuant to this section shall be sold as-is, without any warranty, either express or implied, of any kind, including but not limited to warranties of title or fitness for any purpose. Upon receiving payment for the personal property from the successful bidder, the person or company conducting the auction shall execute an appropriate bill of sale, which shall recite that the sale is without warranty, as provided in this subsection.
- D. Unless otherwise required by a funding agency, in instances whereby the city has procured personal property as a result of funding procured by a granting agency of the federal government and such property has no further value or

need to be retained by the city, the following procedure shall apply: If an item has a value of five thousand dollars (\$5,000) or more, and has been purchased with grant funding, the funding agency shall be notified of the condition of the equipment and the equipment's potential for surplus or disposal. The funding agency shall supply in writing to the city an approval to surplus the grant funded item and the city shall follow the procedure for disposal of such item as required by this section. In the event that the funding agency should not approve, in writing, or issue disposition instructions within one hundred twenty calendar days from the date that notice is given to the funding agency, the city may dispose of the item as set forth in this section.

Passed by the Lebanon City Council and executed by the Mayor this 14th day of March, 2012 with ___ Yeas and ___ Nays.

CITY OF LEBANON, OREGON

Kenneth I. Toomb, Mayor
Bob Elliott, Council President

ATTESTED:

Linda Kaser, City Clerk/Recorder

COUNCIL REVIEWED – 02/08/12

LEBANON MUNICIPAL CODE Chapter 3.04 - PUBLIC CONTRACTS

3.04.010 - City council designated as local contract review board.

3.04.020 - Public contracts to be let according to Public Contracting Code.

3.04.030 - Public contracts exempt from competitive procurement.

3.04.040 - Authority of city administrator.

3.04.050 - Publication of notice.

3.04.060 - Public improvement contracts less than ~~fifty-seventy-five~~ thousand dollars.

3.04.070 - Personal services contracts.

3.04.075 - Selection of consultants for architectural, engineering services, land surveying and related services.

3.04.080 - Disposition of surplus personal property.

3.04.090 - Negotiations.

3.04.100 - Adoption of appropriate purchasing policies.

3.04.110 - Provisions of Contracting Code or Model Rules shall control.

3.04.010 - City council designated as local contract review board.

~~A.~~ The Lebanon city council is designated as the local contract review board under the state of Oregon Public Contracting Code. The contract review board may, from time to time, delegate its powers and responsibilities consistent with the Oregon Public Contracting Code, the Model Rules, or the Lebanon Municipal Code. The city administrator, or his or her designated purchasing agent, is designated as the city's "contracting agency" for purposes of contracting powers and duties assigned to the city of Lebanon as a "contracting agency" under the state of Oregon Public Contracting Code or the Model Rules. The city administrator shall cause a review of all contracts no later than six months prior to the contracts' scheduled termination. The purpose of the review shall be to evaluate the performance of the contractor and make any appropriate recommendations to the city council concerning the contract.

~~B.~~ ~~A written report shall be prepared and presented by the city administrator to the city council in January and July of each calendar year detailing the status of any then pending contracts between the city and each respective contractor.~~

(Ord. 2710 § 1, 2006; Ord. 2371 § 1 (part), 2005)

3.04.020 - Public contracts to be let according to Public Contracting Code.

Except as specifically provided herein, public contracts shall be let by the city of Lebanon according to the state of Oregon Public Contracting Code, including the Model Rules adopted by the Oregon Attorney General as they now exist and as they may be amended in the future, and the Lebanon Municipal Code. Definitions provided by the state of Oregon Public Contracting Code or the Model Rules shall apply to city of Lebanon procurements, except as may be specifically provided herein.

(Ord. 2371 § 1 (part), 2005)

3.04.030 - Public contracts exempt from competitive procurement.

The following classes of public contracts are exempted from competitive procurement:

- A. Any contract exempted by the state of Oregon Public Contracting Code or Model Rules;
- B. Change orders or contract amendments that are reasonably related to the scope of work under the original contract, up to ~~fifty-seventy-five~~ thousand dollars (~~\$75,000~~). Change orders or other amendments that increase the initial price of the contract by more than ~~fifty-seventy-five~~ thousand dollars (~~\$75,000~~) must be separately approved by the contract review board.

COUNCIL REVIEWED – 02/08/12

- C. Contracts for the purchase of computer equipment and software, which may be by requests for quotations, under the procedures in Lebanon Municipal Code Section 1.555(a) and (b).
- D. Purchases through federal programs, pursuant to ORS 279A.180.
- E. An emergency contract, provided that the contracting agency adheres to the requirements of ORS 279B.080 or 279C.335(5) and the Model Rules.
- F. Any other contract (including sole source and brand name specification contracts) where the public interest would be promoted by exempting the contract from the competitive bidding process, provided that the contract review board adheres to the Public Contracting Code and the Model Rules in making the exemption.

(Ord. 2371 § 1 (part), 2005)

3.04.040 - Authority of city administrator.

Administrative staff and departments have contracting authority and responsibilities as follows:

- A. The city administrator (or designee) is authorized to:
 1. Enter into city contracts not to exceed ~~fifty-seventy-five~~ thousand dollars (\$75,000) without additional authorization of the contract review board;
 2. Recommend that the contract review board approve or disapprove contract awards in excess of ~~fifty-seventy-five~~ thousand dollars (\$75,000), or change orders or amendments to contracts of more than ~~fifty-seventy-five~~ thousand dollars (\$75,000);
 3. Consistent with the Lebanon Municipal Code, adopt forms, computer software, procedures, and administrative policies or administrative rules for all city purchases; and
 4. Enter into contracts or permits for local concessions and street vendors (pursuant to applicable city policy) where the annual amount to be paid to or by the city is not expected to exceed ~~fifty-seventy-five~~ thousand dollars (\$75,000) per year.
- B. Purchases of goods from city employees shall require authorization of the city administrator or designee. Provision of services by city personnel shall be in accordance with the city personnel policies and other applicable law.
- C. ~~Departments (other than those otherwise provided herein), shall not contract for amounts above five thousand dollars. Solicitations and contracts above five thousand dollars may be made upon approval of the contracting agency.~~ All contracting by departments shall be according to approved city purchasing procedures adopted by the contracting agency or the contract review board.
- D. Each department shall operate within its budget, or seek supplemental budgetary authority from city council with respect to the contract.
- E. Each department shall plan purchase requirements sufficiently in advance so that orders can be placed in economical quantities.
- F. The city administrator or designee shall process requisition forms and negotiate purchases on the most favorable terms in accordance with adopted ordinances, state laws, policies and procedures.

(Ord. 2371 § 1 (part), 2005)

3.04.050 - Publication of notice.

Notice of public improvement contracts may be published electronically where the contracting agency funds that such publication is likely to be cost effective, as provided in ORS 279C.360.

(Ord. 2371 § 1 (part), 2005)

COUNCIL REVIEWED – 02/08/12**3.04.060 - Public improvement contracts less than seventy-fivethousand dollars (\$75,000).**

Public improvement contracts estimated by the contracting agency not to exceed ~~fifty-seventy-five~~ thousand dollars (~~\$75,000~~) may be let by competitive quote under the following procedures:

- A. The contracting agency shall informally solicit at least three price quotes from prospective contractors. If three prospective contractors are not available, then fewer quotes may be solicited, and the contracting agency shall maintain records of the attempts to obtain quotes.
- B. The contracting agency shall award the contract to the prospective contractor whose quote will best serve the interests of the city of Lebanon, taking into account price and other applicable factors, such as experience, specific expertise, availability, project understanding, contractor capacity, and contractor responsibility. If the contract is not awarded on the basis of the lowest price, the contracting agency shall make a written record of the basis for the award.
- C. A procurement may not be artificially divided or fragmented to qualify for the informal contract award procedures provided by this section.
- D. A public improvement contract let under this section may be amended by change order as provided in Section 3.04.040(A)(2) of this chapter.
- E. Public improvement contracts in excess of ~~fifty-seventy-five~~ thousand dollars (~~\$75,000~~) shall be let in accordance with the provisions of ORS 279C.

(Ord. 2371 § 1 (part), 2005)

3.04.070 - Personal services contracts.

Personal services contracts (other than personal services contracts for architectural or engineering services), are subject to the rules established by this section:

- A. Personal service contracts will be used to retain the services of independent contractors, other than architects or engineers. Nothing in this section shall apply to the employment of regular city employees.
- B. Unless otherwise approved by the city administrator, all personal service contracts shall require the contractor to defend, indemnify, and hold harmless the city, its officers, agents and employees against and from any and all claims or demands for damages of any kind arising out of or connected in any way with the contractor's performance thereunder and shall include a waiver of contractor's right to ORS 30.285 and ORS 30.287 indemnification and defense.
- C. Unless otherwise approved by the city administrator, city personal service contracts shall contain a provision requiring the person or entity providing the service to obtain and maintain liability insurance coverage in at least the amount of the city's tort liability limits, naming the city as an additional named insured, during the life of the contract.
- D. All city personal service contracts shall contain all contract provisions mandated by state law. These provisions may be incorporated in the personal service contract by reference to state law, unless state law provides otherwise. The city attorney's office will prepare model contract provisions for use in city personal service contracts.
- E. The following procedure shall be observed in the selection of personal service contractors:
 1. For personal service contracts involving an anticipated fee of ~~twenty-five-seventy-five~~ thousand dollars (~~\$75,000~~) or less per annum, the city administrator or his or her designated officer may negotiate a contract for such services with any qualified contractor of his or her selection.

~~a. — Unless otherwise directed by the city council, all personal service contracts will be entered into with a contractor at an actual dollar amount and not as a percentage~~

COUNCIL REVIEWED – 02/08/12

~~of any anticipated revenue from an income source;~~

2. For personal service contracts involving an anticipated fee of more than ~~twenty-five~~ seventy-five thousand dollars (\$75,000) per annum, the city administrator or his or her designated officer shall solicit at least three prospective contractors who shall appear to have at least minimum qualifications for the proposed assignment, notify each prospective contractor in reasonable detail of the proposed assignment, and determine the prospective contractor's interest and ability to perform the proposed assignment. In the event that the city administrator or the designee cannot procure at least three prospective contractors, the selection process may proceed, but the city administrator shall document the reasons why three contractors have not been successfully solicited;
 3. The city administrator or his or her designated officer may arrange for any or all interested prospective contractors to be interviewed for the assignment by an appropriate city employee or by an interview committee;
 4. Following a review of the qualifications and interview, where conducted, of the interested prospective contractors, the city administrator or his or her designated officer shall select the prospective contractor, and shall prepare a personal service contract.
- F. The above provisions regarding selection procedures do not apply to amendments, modifications or supplements to executed personal service contracts.
- G. The following criteria shall be considered in the evaluation and selection of a personal service contractor:
1. Specialized experience in the type of work to be performed;
 2. Capacity and capability to perform the work, including any specialized services within the time limitations for the work;
 3. Educational and professional record, including past record of performance on contracts with governmental agencies and private parties with respect to cost control, quality of work, ability to meet schedules, and contract administration, where applicable;
 4. Availability to perform the assignment and familiarity with the area in which the specific work is located, including knowledge of design or techniques peculiar to it, where applicable; and
 5. Any other factors relevant to the particular contract.
- H. The selection procedures described in this section may be waived by the city administrator, at his or her discretion where an emergency exists that could not have been reasonably foreseen and requires such prompt execution of a contract to remedy the situation that there is not sufficient time to permit utilization of the selection procedures.
- I. The city administrator is delegated the authority to sign all personal service contracts.
- J. Nothing contained in this section shall preclude the city from complying with provisions of federal or state law that require the city to utilize a different selection or contracting procedure.

(Ord. 2710 § 2, 2006; Ord. 2371 § 1 (part), 2005)

3.04.075 - Selection of consultants for architectural, engineering services, land surveying and related services.

- A. Subject to state law, the selection of a candidate to perform consulting architectural, engineering, land surveying or related services for the city shall be within the sole discretion of the city, and may be adjusted to accommodate the project's scope, schedule and budget objectives for a particular project. Adjustments to accommodate the city's objectives may include provision for the direct appointment of a consultant if the value of the project does not exceed the threshold amount of seventy-five thousand

dollars (\$75,000). Screening and selection procedures may include a consideration of each candidate's:

1. Specialized experience, capabilities and technical competence that may be demonstrated by the proposed approach and methodology to meet the project requirements;
 2. Resources available to perform the work and the proportion of the candidate staff's time that would be spent on the project, including any specialized services, within the applicable time limits;
 3. Record of past performance, including but not limited to price and cost data from previous projects, quality of work, ability to meet schedules, cost control and contract administration;
 4. Ownership status and employment practices regarding minority, women and emerging small businesses or historically underutilized businesses;
 5. Availability to the project locale;
 6. Familiarity with the project locale; and
 7. Proposed project management techniques.
- B. If the screening and selection procedures created in this section result in the determination by the city administrator or his designate that two or more candidates are equally qualified, the city may select a candidate through any process adopted by the city administrator.
- C. The city administrator or his designate and the selected candidate shall mutually discuss and refine the scope of services for the project and shall negotiate conditions, including but not limited to compensation level and performance schedule, based on the scope of services. The compensation level paid must be reasonable and fair to the city as determined solely by the city. Authority to negotiate a contract under this section does not supersede any provision of state law.
- D. If the city and the selected candidate are unable for any reason to negotiate a contract at a compensation level that is reasonable and fair to the city, the city shall, either orally or in writing, formally terminate negotiations with the selected candidate. The city administrator or his designate may then negotiate with another candidate. The negotiation process may continue in this manner through successive candidates until an agreement is reached or the city terminates the consultant contracting process.
- E. For the purposes of this section, the following definitions apply:
1. "Architect" means a person who is registered and holds a valid certificate in the practice of architecture in the state of Oregon, and includes, without limitation, the terms "architect," "licensed architect" and "registered architect."
 2. "Engineer" means a person who is registered and holds a valid certificate in the practice of engineering in the state of Oregon.
 3. "Land surveyor" means a person who is registered and holds a valid certificate in the practice of land surveying in the State of Oregon.
 4. "Personal services" mean the services of a person or persons that are designated by the city's contract review board as personal services. "Personal services" includes architectural, engineering, land surveying and related services procured under this chapter.
 5. "Related services" means personal services, other than architectural, engineering and land surveying services, that are related to the planning, design, engineering or oversight of public improvement projects or components thereof, including but not limited to, landscape architectural services, facilities planning services, energy planning services, space planning services, environmental impact studies, hazardous substances or hazardous waste or toxic

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substances testing services, wetland delineation studies, wetland mitigation studies, Native American studies, historical research services, endangered species studies, rare plant studies, biological services, archaeological services, cost estimating services, appraising services, material testing services, mechanical system balancing services, commissioning services, project management services, construction management services and owner's representative services or land-use planning services.

(Ord. 2377 § 1, 2005)

3.04.080 - Disposition of surplus personal property.

Disposition of surplus personal property may be made, at the discretion of the city manager or his/her designee, under provisions of the State of Oregon Public Contracting Code, or the Model Rules, or under the provisions of this section;

- A. From time to time and after personal property owned by the city of Lebanon is determined by the city manager or his/her designee to be surplus to the needs of the city, the city may sell the property at public auction. The city may utilize a contracting firm, approved by the contract review board, for disposition of the property on terms and conditions contained in a contract approved by the contract review board. The city shall give notice of the public auction by posting notice of the means by which the property will be disposed of on the city of Lebanon internet website, or by advertisement in a newspaper of general circulation. However, if the city manager shall determine that other disposition is beneficial to the city, he or she may make such finding and, with the approval of the contract review board, dispose of such items through donation, state surplus, or other method determined to be in the best interests of the city.
- B. Auction sales may be conducted entirely on the internet. Sale shall be for cash to the highest bidder. All proceeds of the sale shall be paid to the city's general fund, subject to the terms and conditions of the contract (if any) approved by the contract review board between the city of Lebanon and a firm selected to conduct the auction.
- C. All personal property sold pursuant to this section shall be sold as-is, without any warranty, either express or implied, of any kind, including but not limited to warranties of title or fitness for any purpose. Upon receiving payment for the personal property from the successful bidder, the person or company conducting the auction shall execute an appropriate bill of sale, which shall recite that the sale is without warranty, as provided in this subsection.
- D. Unless otherwise required by a funding agency, in instances whereby the city has procured personal property as a result of funding procured by a granting agency of the federal government and such property has no further value or need to be retained by the city, the following procedure shall apply: If an item has a value of five thousand dollars **(\$5,000)** or more, and has been purchased with grant funding, the funding agency shall be notified of the condition of the equipment and the equipment's potential for surplus or disposal. The funding agency shall supply in writing to the city an approval to surplus the grant funded item and the city shall follow the procedure for disposal of such item as required by this section. In the event that the funding agency should not approve, in writing, or issue disposition instructions within one hundred twenty calendar days from the date that notice is given to the funding agency, the city may dispose of the item as set forth in this section.

(Ord. 2371 § 1 (part), 2005) (Ord. No. 2804, § 1, 8-25-2010)

3.04.090 - Negotiations.

If bids are solicited for a public improvement contract, and all bids exceed the budget for the project,

the contracting agency may, prior to contract award, negotiate for a price within the project budget under the following procedures:

- A. Negotiations will begin with the lowest, responsive and responsible bidder. If negotiations are not successful, then the contracting agency may begin negotiations with the second lowest responsive, responsible bidder, and so on.
- B. Negotiations may include the inclusion of value engineering and other options to attempt to bring the project cost within the budgeted amount.
- C. A contract may not be awarded under this section if the scope of the project is significantly changed from the description in the original bid documents.
- D. The contracting agency will adhere to the provisions of ORS 279C.340 in applying this section.

(Ord. 2371 § 1 (part), 2005)

3.04.100 - Adoption of appropriate purchasing policies.

The contracting agency shall adopt appropriate purchasing policies dealing with ethics, environmental considerations and the like, subject to review and modification by the contract review board.

(Ord. 2371 § 1 (part), 2005)

3.04.110 - Provisions of Contracting Code or Model Rules shall control.

In the event of a conflict between any provision of the State of Oregon Public Contracting Code or the Model Rules and this chapter, the provisions of the State of Oregon Contracting Code or the Model Rules shall control.

(Ord. 2371 § 1 (part), 2005)

Agenda Item 7



MEMORANDUM

Administration

To: Mayor and City Council

Date: March 14, 2012

From: John Hitt, City Manager

Subject: Sale of City-Owned Surplus Real Property

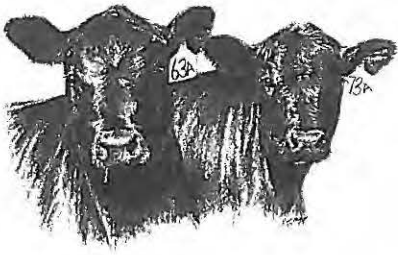
Please find attached an offer from Randy Raschein, of Riverland Ranch, LLC, to purchase approximately 2.5 acres from the City of Lebanon. The proposed area to be purchased would result from a property line adjustment between adjacent parcels (Lots Nos. 1900 & 2002) currently owned by the city and Mr. Raschein.

Should the council approve the sale, and thereby accept the property line adjustment, the city's lot No. 2002 would decrease from the current 44.78 acres to approximately 42.1 acres.

The current property line is somewhat uncertain due to a 1913, 20' public road easement which has never been used or been well-defined. So, a property line adjustment would clarify the boundary between the two parcels and remove any county road issues for the city.

Regarding value, the county assessor estimates the real market value (RMV) of land in this area to be an average of \$8,700 (+/-) per acre. Mr. Raschein is offering substantially less, \$3,000 per acre. However, he will pay for all costs associated with the sale and establishing the new property line.

I believe Mr. Raschein will be present for the March 14 city council meeting.



Riverland Ranch LLC
29419 Brownsville Rd.
Brownsville, Ore 97327
541 979 5202



Attn: John Hitt,
City of Lebanon
925 Main St
Lebanon, Oregon
97355

This letter is a offer on the surplus property located on Tennessee rd. located across from the waster water treatment plant. I don't have an address to recognize it, but I'm sure you're familiar with it. Anthony at Udell said it will consist of approx. 2.5 acres more or less, Udell will have the exact acreage after the final survey pins are set. I will pay for all the costs of surveying, recording and filing fees and also erect a new fence.

I am willing to offer \$3000 per acre for this property.

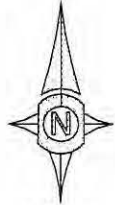
Thank You
Randy Raschein

AREA A
 OWNER: RIVERLAND RANCH LLC
 29419 BROWNSVILLE RD
 BROWNSVILLE OR 97327

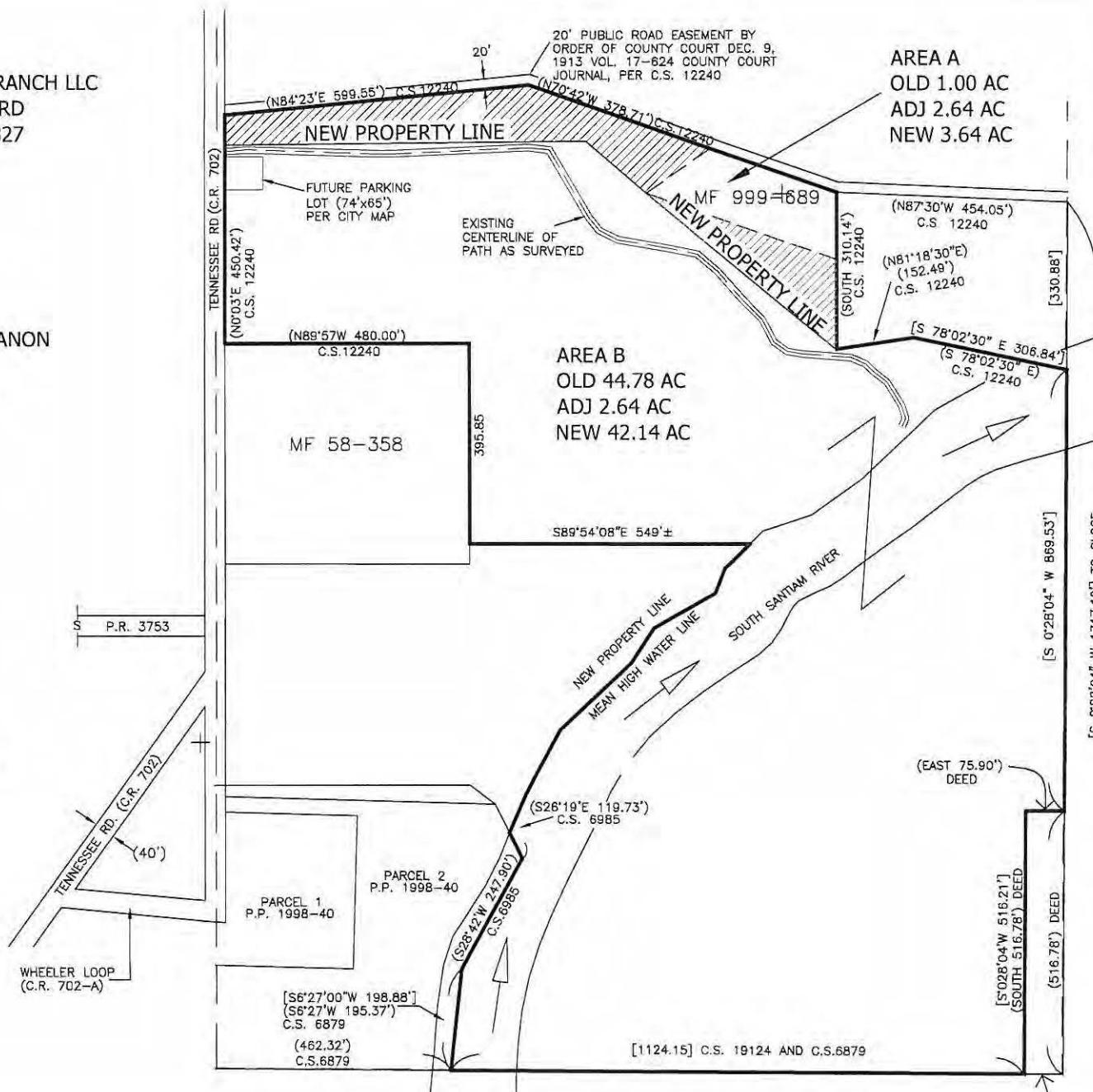
MAP: 12S-2W-02
 TAX LOT: 1900
 ZONED: EFU

AREA B
 OWNER: CITY OF LEBANON
 925 S MAIN ST
 LEBANON OR 97355

MAP: 12S-2W-02
 TAX LOT: 2002
 ZONED: HI



SCALE:



AREA A
 OLD 1.00 AC
 ADJ 2.64 AC
 NEW 3.64 AC

AREA B
 OLD 44.78 AC
 ADJ 2.64 AC
 NEW 42.14 AC

UDELL ENGINEERING AND LAND SURVEYING, LLC
 63 EAST ASH ST.
 LEBANON, OREGON, 97355
 541-451-5125

PRELIMINARY PROPERTY LINE ADJUSTMENT

RIVERLAND RANCH
 LEBANON, OREGON

Date: 02/22/06
 Project: 10
 Drawn by: ASD
 Checked by:

SHEET 1 of 1

SCALE AS NOTED

LINN County Assessor's Summary Report

Real Property Assessment Report

FOR ASSESSMENT YEAR 2010

February 28, 2012 12:00:15 pm

Account # 168944
 Map # 12S02W02-00-02002
 Code - Tax # 00907-168944
 00916-921659
 00920-921660
 00948-921661
 00949-921663

Tax Status NONASSESSABLE
 Acct Status ACTIVE
 Subtype NORMAL

Legal Descr Metes & Bounds - See legal report for full description.

Mailing Name LEBANON CITY OF
 Agent
 In Care Of
 Mailing Address 925 S MAIN ST
 LEBANON, OR 97355

Deed Reference # 1238-0419 (SOURCE ID: MF1238-0419)
 Sales Date/Price 11-27-2001 / \$320,000.00
 Appraiser UNKNOWN

Prop Class 940 MA SA NH Unit
 RMV Class 300 03 02 000 15988-1

Situs Address(s)	Situs City
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		Value Summary				
Code Area		AV	RMV	MAV	RMV Exception	CPR %
00907	Land		161,440			0
	Impr.		0	7,871		0
Code Area Total		0	161,440	0		0
00916	Land		1,150	9,583		0
	Impr.		0			0
Code Area Total		0	1,150	0		0
00920	Land		132,870	7,569		0
	Impr.		0			0
Code Area Total		0	132,870	0		0
00948	Land		58,910	9,471		0
	Impr.		0			0
Code Area Total		0	58,910	0		0
00949	Land		4,160	9,454		0
	Impr.		0			0
Code Area Total		0	4,160	0		0
Grand Total		0	358,530	0		0

						Land Breakdown					
Code Area	ID#	RFD	Ex	Plan Zone	Value Source	TD%	LS	Size	Land Class	Irr Class	Irr Size
00907	1	R	1		Industrial Site	100	A	20.51			
Code Area Total								20.51			0.00
00916	1	R	1		Industrial Site	100	A	0.12			
Code Area Total								0.12			0.00
00920	1	R	1		Industrial Site	100	A	17.49			
Code Area Total								17.49			0.00
00948	1	R	1		Industrial Site	100	A	6.22			
Code Area Total								6.22			0.00
00949	1	R	1		Industrial Site	100	A	0.44			
Code Area Total								0.44			0.00
Grand Total								44.78			0.00

					Improvement Breakdown					Trended
Code Area	ID#	Yr Built	Stat Class	Description	TD%	Total Sq. Ft.	Ex%	MS Acct #	RMV	
Grand Total						0			0	

Agenda Item 8



MEMORANDUM

Administration Department

To: Mayor and City Council

Date: March 6, 2012

From: John Hitt, City Manager

Subject: City Managers Report

At the March 14, 2012, City Council meeting, I will provide a brief oral update on the following:

- Chief of Police Recruitment (HR Manager)
- Water Billing Policy/Process (Finance Manager)
- Records Management /Retention (City Clerk)
- Miscellaneous

JEH/jb

Linkin *
Craig's List

Library Manager Recruitment

- Opened recruitment on March 1, 2012
- Scheduled to do our first round of interviews on the week of April 9th.
- To date we have received two applications-
 - One candidate is from Cove, Oregon- for those of you who may not know Cove, Oregon is located just east of LaGrande, Oregon, just next to Oregon's beautiful Wallowa-Whitman National Forest.
 - The other candidate is from Simpsonville, South Carolina
- We will continue our advertising efforts throughout the next several weeks. This position is opened until filled, which means that we will not close the recruitment process until we have found the best match for the community.

Places of advertisement:

- Democrat Herald
- League of Oregon Cities
- Lebanon Express
- Work Source Oregon
- City of Lebanon Web site
- Oregon State Library Jobline
- Statesman Journal
- And effective today we have advertised on the
 - American Library Association website
 - The Pacific NW Library Association website
 - Lisjobs.com

Police Chief Recruitment

- Opened recruitment on February 15, 2012
- Scheduled for community meet and greet and first round of interviews during the week of April 16th.
- Community Host Team comprised of:
 - Nancy Chlarson
 - Carol Cromwell
 - Ryan Noss
 - Patrick O'Malley
 - Brian Vandetta
 - Jason Williams

- OACP Oregon Police Association
- Democrat Herald
- WASPC Washington Police Chiefs Associations
- Work Source Oregon
- City of Lebanon website



Understanding Your City Utility Bill

BILLING PROCEDURE

The exact dates of the monthly billing process may vary somewhat due to holidays, delays in meter readings, weekend, etc. However, the City of Lebanon utility bills are generally mailed the last business day of each month. Most customers will receive their bill around or before the 1st business day of each month. Payment is due upon receipt.

TYPICAL PAYMENT DUE DATES & LATE PAYMENT PROCEDURES

(Exact Due Dates are Printed on Each Month's Bill)

1st day of the month Bills due and payable for prior month's water/sewer service.

14th day of the month Bills become past due.

18th day of the month Late fee of \$10 assessed to any bill with an unpaid balance (unless alternate payment arrangements have been made).

23rd-24th day of the month "Door Hangers" placed on all properties with any unpaid balance. Additional fee of \$15 added to the unpaid balance.

29th-31st day of the month Water service may be terminated for any unpaid bills.

RECONNECTION

If water service is shut off, a reconnection fee of \$50 (\$100 if after hours), and any remaining unpaid balance must be first paid.

UTILITY BILL PAYMENT ASSISTANCE

Numerous local/state agencies or organizations provide utility billing payment assistance. The Utility Office has a list and contact information.

PAYMENT OPTIONS

In Person or Mail: Lebanon Utility Billing Office, 925 S. Main Street, Lebanon, OR 97355

Drop Boxes: Available 24-hours a day for check and money order payments

Lebanon City Hall
925 S. Main Street

Safeway
1983 S. Main Street

Lebanon Senior Center
80 Tangent Street

Online Bill Pay: <https://lebanon.merchanttransact.com>

Automatic Bill Pay: Direct debit withdrawal from checking account. Contact the Utility Billing Office.

Lebanon Utility Billing Office

Lebanon City Hall
925 S. Main Street
Lebanon, OR 97355

Customer Service Hours

7:00 AM – 5:00 PM
Monday thru Friday
Issue date: March 14, 2012

Contact Information

Phone: 541-258-4913
Website: ci.lebanon.or.us
Email: dbaugh@ci.lebanon.or.us

CONFIDENTIAL



MEMORANDUM

Public Works Department

To: Mayor Ken Toomb, City Councilors, and
John Hitt, City Manager

Date: March 14, 2012

From: Daniel Grassick, PE, *DJG* General Manager Utility Services

Subject: Property Acquisition for New Water Tank

REQUEST: Staff requests Council guidance and direction on negotiations with a private property owner for purchase of a one-acre parcel that is needed for the construction of a new water tank.

DISCUSSION:

One element of the new water treatment system is replacement of an existing 2 million gallon (MG) water tank with a new 4 MG tank. As part of the overall water system plan, the tank construction is planned for the first half of calendar year 2013. Several options for the tank design and location have been evaluated. The most cost effective option requires acquisition of an additional one-acre parcel of land adjacent to the existing tank property. Site plans of the options are attached. Each option requires additional property acquisition.

Costs for the three tank options vary significantly, largely based on structural foundation considerations. A new 4 MG tank just south of the existing tank is the least cost alternative that requires an additional one acre acquisition. A new 4 MG tank on the same site as the existing tank adds approximately \$300,000 and requires acquisition of just under a quarter-acre. Two 2 MG tanks add approximately \$550,000 and require acquisition of just under a quarter-acre.

Staff has contacted the property owner and opened discussions on the potential for the City to purchase one acre of the existing 43-acre parcel. Discussions have stalled on the difference in the offer and asking price. In April 2009, during water system project planning, staff had a property appraisal completed (summary copy attached) for the potential acquisition of an additional half acre as that was the estimated area needed for a new tank prior to design. Staff used this appraisal value and doubled it as the starting offer position with the property owner.

The owner has countered and remained steadfast with an asking price that is double our initial starting offer. This leaves us in an untenable position of either paying considerably more than the appraised value or using the process of acquisition via condemnation and paying the just value based on a current appraisal.

Staff requests Council guidance and direction on the next steps for property acquisition.

◆ **William E. Adams, MAI** ◆
Real Estate Appraisal & Consultation
1809 Sunburst Terrace NW
Salem, OR 97304
Tel: (503) 585-6656
Fax: (503) 585-6444
Email: 1billadams@comcast.net

April 22, 2009

Mr. Rob Emmons, PE
Public Works Department
City of Lebanon
853 Main Street
Lebanon, OR 97355

RE: Appraisal Assignment --- Just Compensation Estimate involving
Property owned by Ruth Moss and located along
5th Street in Lebanon, Oregon

Dear Mr. Emmons:

At your request, I have prepared a real estate appraisal estimating Just Compensation for the acquisition of a fee taking within the above-referenced property. The property is currently owned by Ruth Moss and consists of 137.11 acres of land within two existing tax lots. This land is situated adjacent, yet outside of the Lebanon city limits but within Lebanon's Urban Growth Boundary. The parcel is designated for Residential-Mixed Density use on the City's Comprehensive Plan. The two tax lots are collectively utilized for agricultural use and include three separate residential structures as well as supporting residential & agricultural buildings. The two tax lots under this Moss ownership are considered the larger parcel for this appraisal assignment.

Just Compensation is estimated as of April 13, 2009, coinciding with the property's inspection date. The interest appraised is the fee simple estate. The intended use of this appraisal is to assist the client (City of Lebanon) in negotiating the acquisition of the fee taking. This acquisition is necessary for Lebanon's Water System Improvement Project. The City currently owns a tax lot immediately adjacent to the proposed acquisition area. Within the City's lot are a large water reservoir and supporting infrastructure. The City intends to expand their adjacent facility into the newly-acquired fee taking. The intended users of this report consist of the client, the property owner, and associated parties related to the potential acquisition.

This report is prepared in compliance with the current Uniform Standards of Professional Appraisal Practice (USPAP), as formulated by The Appraisal Foundation; and the Standards of Professional Appraisal Practice and the Code of Professional Ethics of the Appraisal Institute.

Mr. Rob Emmons
RE: Moss Property
April 22, 2009
Page Two

The appraisal is prepared in a self-contained report format in accordance with USPAP Standards Rule 2-2(a). The scope of work utilized for this assignment is considered typical for this property type, the proposed transaction, and the intended use.

The appraiser has sufficient education and experience in valuing similar properties to satisfy the competency provision of the Uniform Standards. Just Compensation is estimated using the appropriate valuation methodology, with land value estimated using the Sales Comparison Approach and the value of the site improvements (if any) within the acquisition area estimated using the Cost Approach. Please note that the existing building improvements within the larger parcel are not within nor negatively impacted by the proposed acquisition. As such, this valuation does not estimate the value of the subject as presently improved.

Reference to the Assumptions and Limiting Conditions section of the attached report is recommended for a complete understanding of the basis on which the value of the larger parcel and the Just Compensation estimate are predicated. No extraordinary assumptions or hypothetical conditions were employed in deriving the value of the larger parcel or the Just Compensation estimate.

After considering all of the data assembled for the attached appraisal report, Just Compensation for the acquisition of the fee taking as of the April 13, 2009 inspection date is estimated to be:

SIXTEEN THOUSAND FIVE HUNDRED DOLLARS.....\$16,500

The reasoning and analysis leading to this conclusion are discussed in the following appraisal report.

Sincerely,

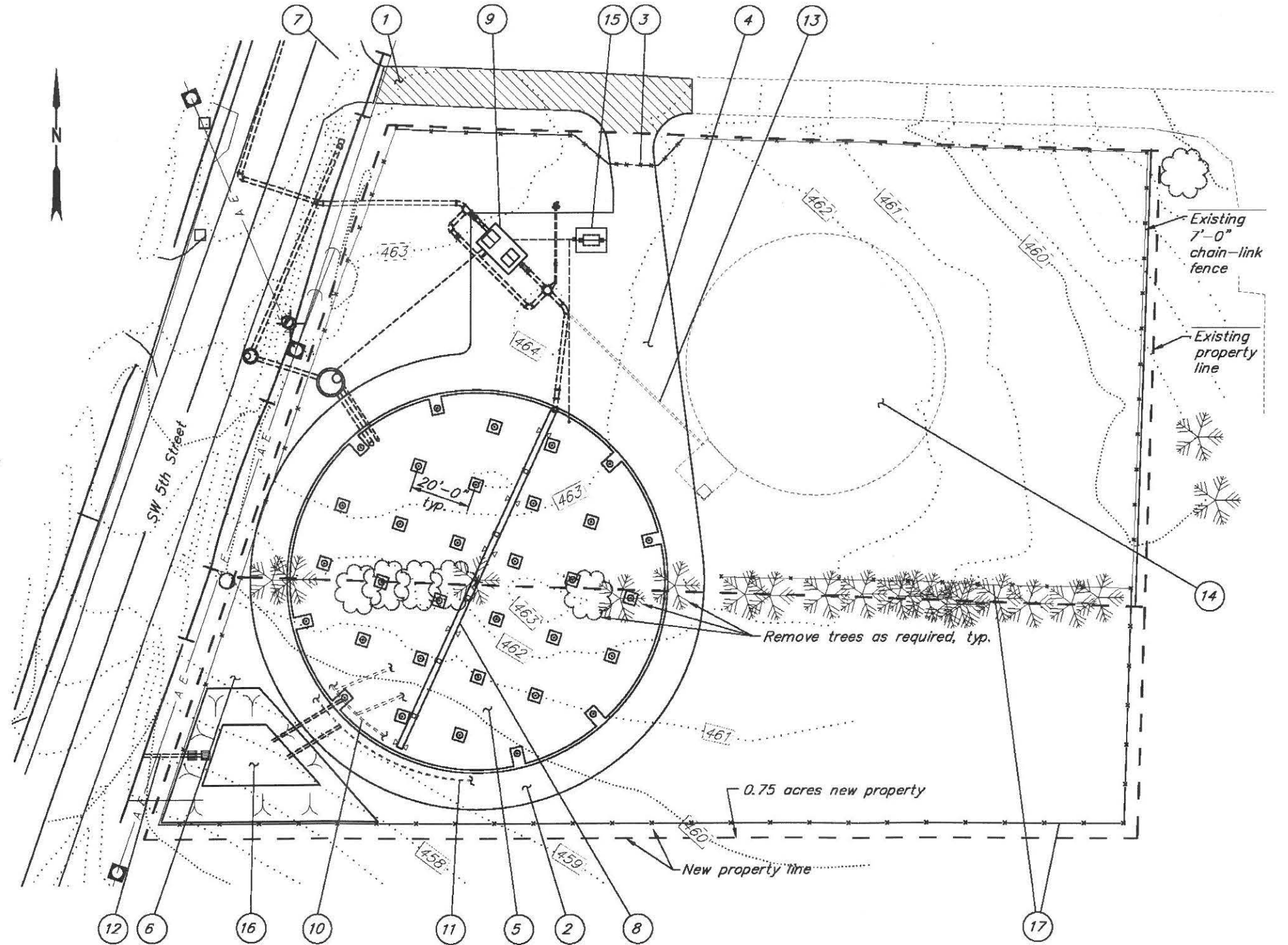


William E. Adams, MAI

C:\obec\pwc\...ms28597\0047-0018_03 ALTERNATE B (Old).dwg, 1/31/2012 8:24:51 AM

Alternate B Construction Notes:

- 1 Paved access roadway in easement to limits shown.
- 2 12' wide gravel tank perimeter roadway.
- 3 16' wide double leaf gate that allows ingress/egress.
- 4 Gravel turnaround with 3 parking spaces for maintenance of de-chlorination manhole and valve vault.
- 5 4.0 MG nominal (4.15 MG gross) circular prestressed concrete water tank
 - 124' nominal ID
 - 126' nominal OD
 - 45.8' storage height (at center)
 - Floor slab El. 461.6 perimeter, El. 462.8 at center (2% slope) (El. 462.8 Existing)
 - Overflow elevation El. 508.6
 - Top of roof slab El. 509.6 at perimeter, El. 510.9 at center (2% slope)
- 6 Passive de-chlorination manhole.
- 7 Existing 16" dia. waterline to be daylighted into existing to Oak Creek at South 5th Street Bridge (off-site work). Outlet to creek likely needs energy dissipating structure.
- 8 Single inlet/outlet mixing manifold.
- 9 Valve vault, see mechanical drawings.
- 10 Floor under drain perforated piping to tight line to de-chlorination manhole.
- 11 Reservoir roof slab downspouts and perimeter drain tight line to detention pond.
- 12 12" dia. detention pond outlet pipe to roadside stormwater ditch.
- 13 Temporary reroute existing waterline.
- 14 Demolish existing steel water tank.
- 15 Electrical/Control shelter.
- 16 Detention pond.
- 17 Demolish existing fence and construct new fence.

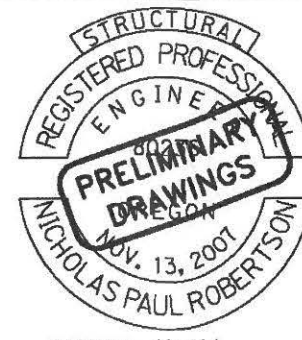


PLAN
Scale: 1"=40'

WARNING

IF THIS BAR DOES NOT MEASURE 1/2" THEN DRAWING IS NOT TO SCALE

REV.	DESCRIPTION	BY	DATE



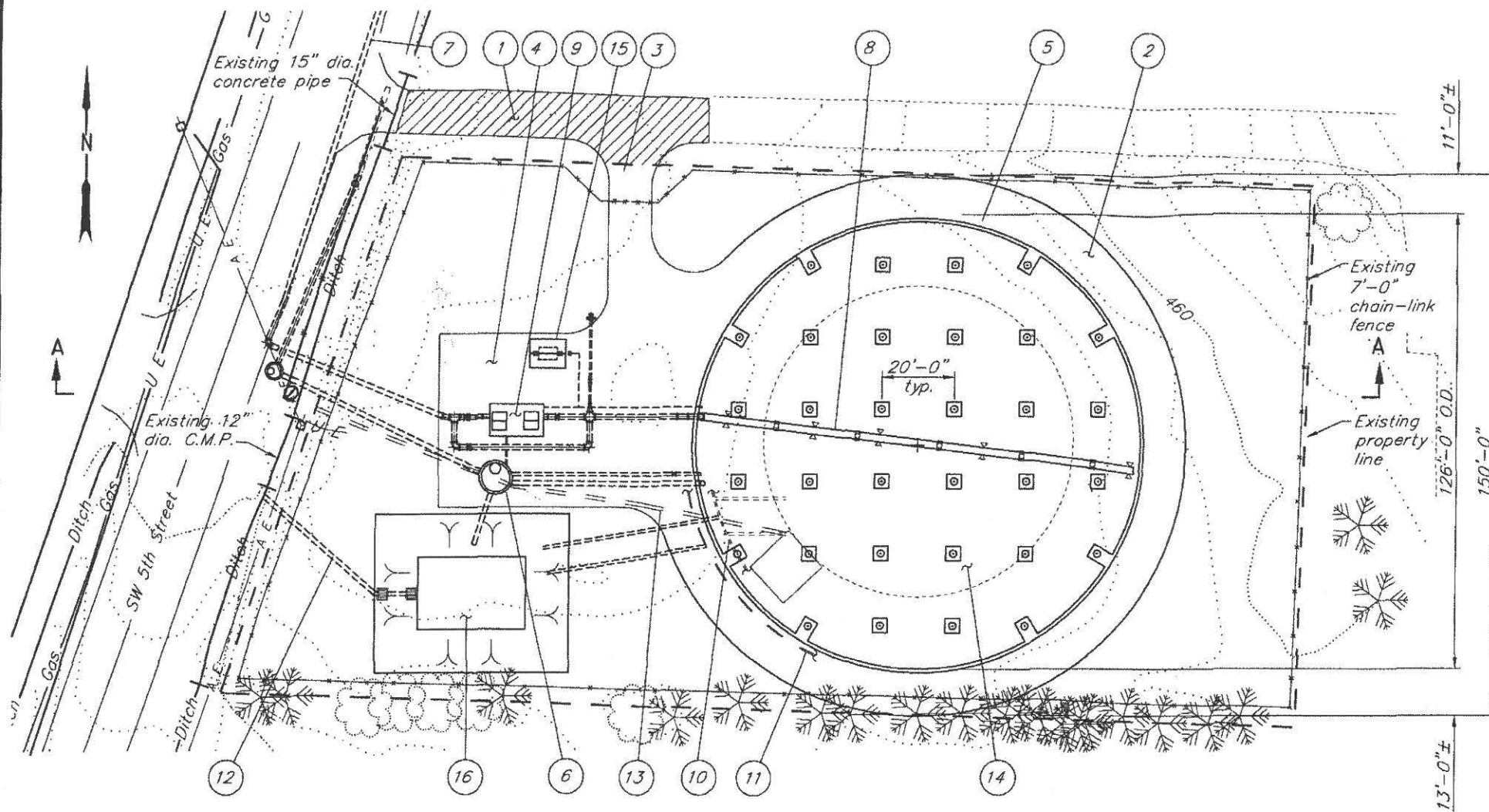
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Corporate Office: 920 COUNTRY CLUB ROAD, SUITE 100B EUGENE, OREGON 97401-6089
831 CHARE PARKWAY MEDFORD, OREGON 97504-4005

5TH STREET WATER RESERVOIR UPGRADES
CITY PROJECT NO. 11708
CITY OF LEBANON OREGON

(OLD) ALTERNATE B PLAN
DESIGNED: Nick Robertson, P.E. PROJ. NO. 47-18 SHEET 2 OF 3
DRAWN: RDS CHKD: BSN FILE NO. DATE: Jan. 2012

Note:
Elevations are based on the North American Vertical Datum 1988 (M.S.L. = 0.0).

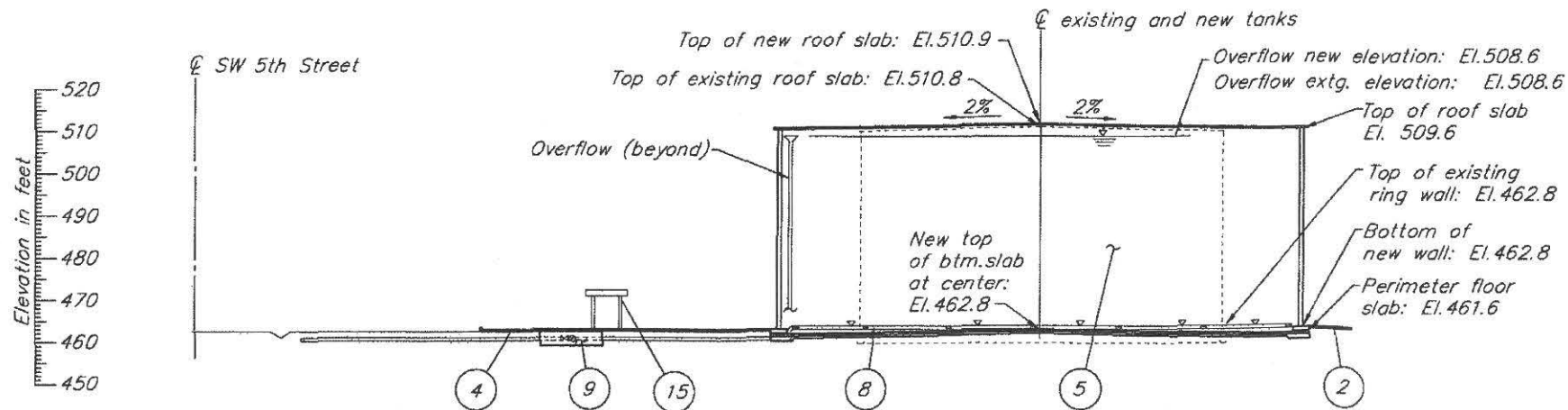
C:\obec\bec01\dmis28597\0047-0018_02 ALTERNATE A P&E.dwg, 1/10/2012 7:01 AM



PLAN
Scale: 1"=40'

Alternate A Construction Notes:

- 1 Paved access roadway in easement to limits shown.
- 2 12' wide gravel tank perimeter roadway.
- 3 16' wide, double leaf gate that allows ingress/egress.
- 4 Gravel hammerhead turnaround with 3 parking spaces for maintenance of de-chlorination manhole and valve vault.
- 5 4.0 MG nominal (4.15 MG gross) circular prestressed concrete water tank
 - 124' nominal ID
 - 126' nominal OD
 - 45.8' storage height (at center)
 - Floor slab El. 461.6 perimeter, El. 462.8 at center (2% slope) (El. 462.8 Existing)
 - Overflow elevation El. 508.6
 - Top of roof slab El. 509.6 at perimeter, El. 510.9 at center (2% slope)
- 6 Passive de-chlorination manhole.
- 7 Existing 16" dia. waterline to be daylighted into existing to Oak Creek at South 5th Street Bridge (off-site work). Outlet to creek likely needs energy dissipating structure.
- 8 Single inlet/outlet mixing manifold.
- 9 Valve vault, see mechanical drawings.
- 10 Floor under drain perforated piping to tight line to de-chlorination manhole.
- 11 Reservoir roof slab downspouts and perimeter drain tight line to detention pond.
- 12 12" dia. detention pond outlet pipe to roadside stormwater ditch.
- 13 Abandon existing waterline under tank (fill with sand or CDF).
- 14 Demolish existing steel water tank.
- 15 Electrical/Control shelter.
- 16 Detention pond.

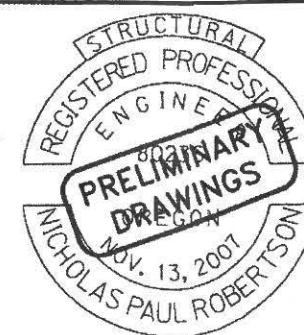


SECTION A-A
Scale: 1"=40'



WARNING
IF THIS BAR DOES NOT MEASURE 1/2" THEN DRAWING IS NOT TO SCALE

REV.	DESCRIPTION	BY	DATE



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EUGENE, OREGON 97401-6089
831 CHAPE PARKWAY
MEDFORD, OREGON 97504-4005

5TH STREET WATER RESERVOIR UPGRADES

CITY PROJECT NO. 11708
CITY OF LEBANON OREGON

ALTERNATE A PLAN AND ELEVATION

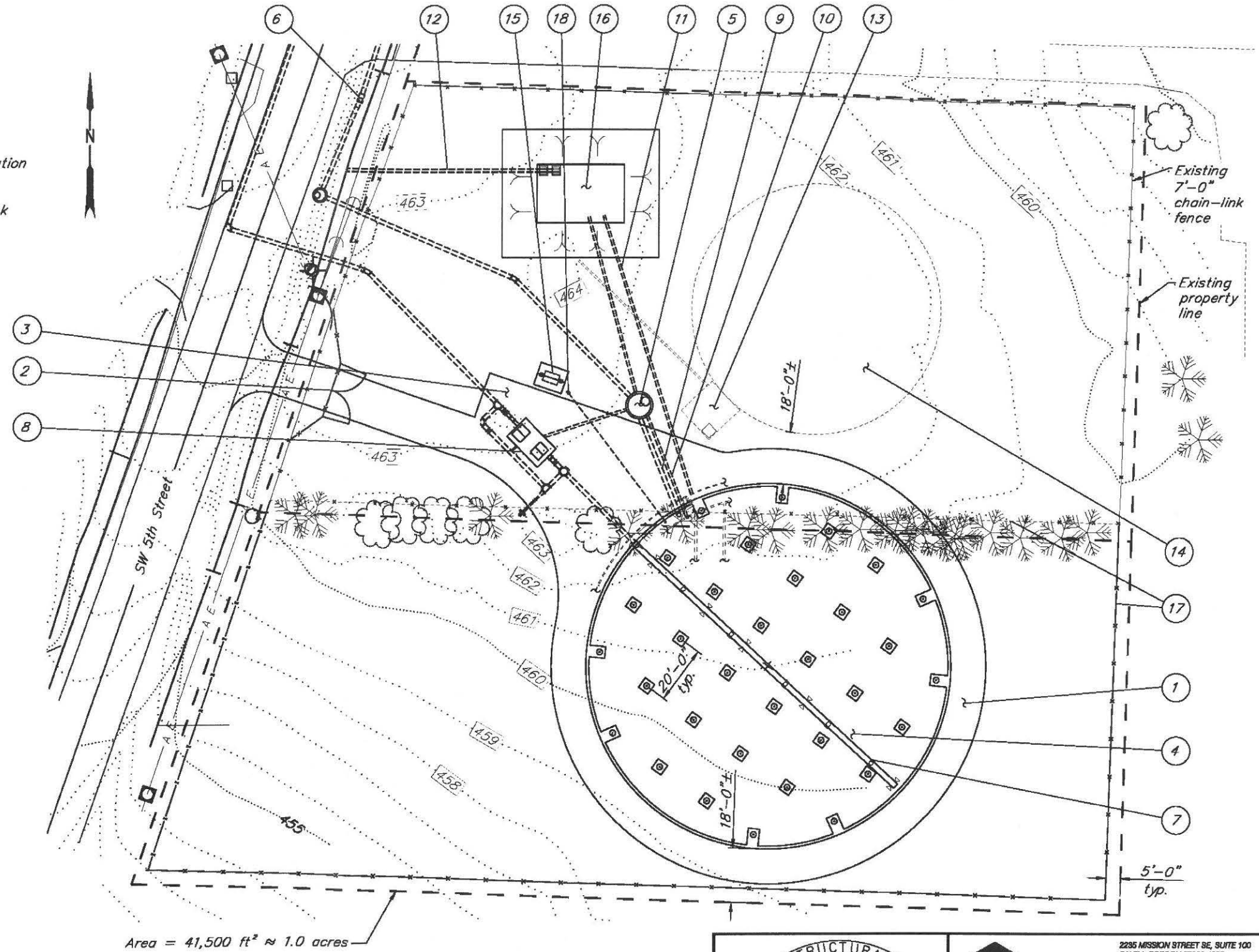
DESIGNED: Nick Robertson, P.E. PROJ. NO. 47-18 SH. 1 OF 3
DRAWN: RDS CHKD: BSV FILE NO. DATE: Jan. 2012

Note:
Elevations are based on the North American Vertical Datum 1988 (M.S.L. = 0.0).

C:\obec\pwboc01\dmis28597\0047-0018_04 ALTERNATE B.dwg, 1/31/2012 8:19:26 AM

Alternate B Construction Notes:

- 1 12' wide gravel tank perimeter roadway.
- 2 16' wide double leaf gate that allows ingress/egress.
- 3 Gravel turnaround with 3 parking spaces for maintenance of de-chlorination manhole and valve vault.
- 4 4.0 MG nominal (4.15 MG gross) circular prestressed concrete water tank
 - 124' nominal ID
 - 126' nominal OD
 - 45.8' storage height (at center)
 - Floor slab El. 461.6 perimeter, El. 462.8 at center (2% slope)
 (El. 462.8 Existing)
 - Overflow elevation El. 508.6
 - Top of roof slab El. 509.6 at perimeter, El. 510.9 at center (2% slope)
- 5 Passive de-chlorination manhole.
- 6 Existing 16" dia. waterline to be daylighted into existing to Oak Creek at South 5th Street Bridge (off-site work). Outlet to creek likely needs energy dissipating structure.
- 7 Single inlet/outlet mixing manifold.
- 8 Valve vault, see mechanical drawings.
- 9 Floor under drain perforated piping to tight line to de-chlorination manhole.
- 10 Take overflow piping to de-chlorination manhole.
- 11 Reservoir roof slab downspouts and perimeter drain tight line to detention pond.
- 12 12" dia. detention pond outlet pipe to roadside stormwater ditch.
- 13 Infill existing vault.
- 14 Demolish existing steel water tank.
- 15 Electrical/Control shelter.
- 16 Detention pond.
- 17 Demolish existing fence and construct new fence.
- 18 1" sample line and tank pressure gauge.

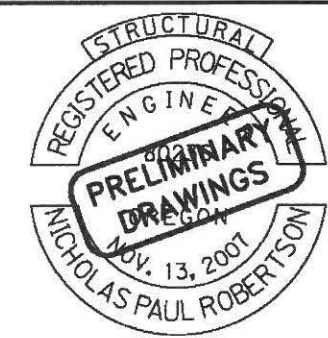


Area = 41,500 ft² ≈ 1.0 acres

PLAN
Scale: 1"=40'

WARNING

IF THIS BAR DOES NOT MEASURE 1/2" THEN DRAWING IS NOT TO SCALE.



EXPIRES: 12/31/

REV.	DESCRIPTION	BY	DATE

Note:
Elevations are based on the North American Vertical Datum 1988 (M.S.L. = 0.0).

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831 CHARE PARKWAY
MEDFORD, OREGON 97504-4006

5TH STREET WATER RESERVOIR UPGRADES
CITY PROJECT NO. 11708
CITY OF LEBANON OREGON

ALTERNATE B PLAN

DESIGNED: Nick Robertson, P.E. PROJ. NO. 47-18 SHT. 2 OF 3
DRAWN: RDS CHKD: BSN FILE NO. DATE: Jan. 2012

FY 2012/13 CITY COUNCIL GOALS (Established 12/14/2011)

Administration - City Clerk (B)

No.	Goal Description	Date Formed	Definition of Goal Accomplishment/Achievement	Current Goal Status	Estimated Completion Date	Comments
B1	Establish Records Management Program in accordance with state law.	Jan 2009	1) Policies and Procedures written and implemented for records management program. Program includes purchase of electronic records management system that monitors the State's Retention Schedule.	Records Management Software has been determined. Purchase put on hold due to HR software purchase. Contracts with the SOS's Office and Chaves Consulting have been signed. Initial setup of the new electronic records management software (HP TRIM) is expected to begin in approx. 6 mths. (Timeframe depends on the State)	Phase 2: 2012/2013 Phase 3: 2014	Phase 1: Completed Nov 2010 (Construction/Relocation of Archive Room); Phase 2: Meet with State Reps and TRIM Software Vendor (Met Feb 2012) while Drafting/Implementing Records Management Policies and Procedures; and Phase 3: Purchase / Implement Citywide Electronic Records Management & Retention Software. (We will initially have 12 users)

Administration - Economic Development (C)

No.	Goal Description	Date Formed	Definition of Goal Accomplishment/Achievement	Current Goal Status	Estimated Completion Date	Comments
C1	Attract Hotel/Motel and Restaurant Facilities	Oct 2005 & Redefined 2008	Assist Lebanon Community Hospital to Attract Hotel/Motel and Restaurant Facilities	Have had several conversations with potential developers and assisted with marketing study.	2012	Nothing new to report as of Dec 2011.

Researched and presented by, Ray Weldon, Lebanon City Councilor Ward I

Lebanon City Charter ---- Section 10. Other Officers

Additional officers of the city shall be a City Recorder, a City Attorney, a City Administrator, and in the discretion of the Council, a Municipal Judge and whatever other officers the Council deems necessary. **The Municipal Judge, the City Attorney, and the City Administrator shall be appointed by the Council and be responsible to it** and the other additional officers shall be appointed by the City Administrator and be responsible to him/her. The Council, as needs dictate, may appoint one or more pro tem Municipal Judges to serve such term as the Council provides.

League of Oregon Cities ----- City Council Guide ----- City Attorney

The City Attorney is appointed by the Council to act as the chief legal officer of the City. The City Attorney advises the Council and staff regarding the requirements of statutes ordinances, **represents the City in ongoing litigation**, prosecutes cases involving a violation of City ordinance, and performs other functions as needed by the City.

Both the Municipal Judge and City Attorney report directly to the City Council and are not under the Administrative direction of the City Administrator or each other.

According to the Lebanon City Charter and the League of Oregon Cities, the following must be incorporated into the revised Personal Services Contracts 3.04.070

Revision of: Personal Services Contracts 3.04.070

1. Must be a set maximum dollar amount the City Administrator can prepare a Personal Services Contract. Above which he must obtain authority from the Lebanon City Council by a motion and vote.
2. All Personal Services Contracts for a lawyer or legal firm must be authorized by the Lebanon City Council by a motion and vote.
 - A. The City Council has a lawyer under contract that only answers to the City Council.
 - B. The City Council's lawyer is paid \$10,000 a month and must be used if possible.
 - C. The City Council must know the city administrator's reason for requesting tax payer's funds to prepare a contract for a lawyer.
 - D. The City Council must confer with their lawyer and decide whether to accept the city administrator's request.
 - E. If accepted, the City Council will decide to either use the city attorney or allow the city administrator to contract with one.
3. The above must be incorporated in the revised Personal Services Contracts 3.04.070 for the following reasons.
 - A. To provide checks and balances.
 - B. Provides good accounting practices.
 - C. To prevent misuse of funds.
 - D. Keeps honest people honest.
 - E. To prevent the costly misuse of tax payer's money as has been the past practice and is also being performed at this time.

Contracting attorneys that will be paid with tax payer's money to protect city employees that have violated the perimeters of their employment could cost tens of thousands of dollars. When city funds are misused in this manner, it will require dedicated city employees be laid off.

Other Lebanon City Councilors have argued against implementing the above rules. They seem to think it would be a waste of city council time and that they don't have any time to waste. The Lebanon City Council has gone from two meeting a month down to one and sometimes that meeting only lasts a hour.



Ray Weldon
City Councilor
Ward I
March 14, 2012

Lebanon City Council,
Lebanon City Employees,
Citizens of Lebanon

LEBANON CITY CHARTER
Chapter III
Form of Government

Section 10. Other Officers

Additional officers of the city shall be a City Recorder, a City Attorney, a City Administrator, and in the discretion of the Council, a Municipal Judge and whatever other officers the Council deems necessary. The Municipal Judge, the City Attorney, and the City Administrator shall be appointed by the Council and be responsible to it and the other additional officers shall be appointed by the City Administrator and be responsible to him/her. The Council, as needs dictate, may appoint one or more pro tem Municipal Judges to serve such term as the Council provides.

Section 33. What Creates a Vacancy.

An office shall be deemed vacant upon the incumbent's death, adjudicated incompetence, conviction of a felony, other offense punishable by loss of liberty pertaining to his/her office, or unlawful destruction of public records, resignation, recall from office, the lack of a qualified candidate during a regular election, or ceasing to possess the qualifications for the office. The office of Mayor or Councilman shall be deemed vacant upon his/her absence from the City for more than 60 days without the consent of the Council, and upon a declaration by the Council of the vacancy.


On March 25, 2011, judge John McCormick ruled that a city of Lebanon officer, City Administrator John Hitt, was guilty of the unlawful destruction of public records. The time frame to appeal the judge's decision has passed and an appeal can no longer be filed.

By not filing an appeal, John Hitt has accepted the guilty verdict.

According to the Lebanon City Charter the office of City Administrator has been deemed vacant since March 25, 2011.

The Mayor and five City Councilor's refusal to deal with the vacancy created March 25, 2011 as the citizens of Lebanon require, per the Lebanon city charter, I'm demanding the following take place immediately.

As John Hitt is no longer an employee of the city of Lebanon, he must turn in his key card to the City Recorder at this time. When he wants to remove his personal items he will have to contact the police department. The police department will provide a police officer to accompany him into city hall, out of the building and insure John Hitt does not speak to city employees.


Ray Weldon

PUBLIC HEARING
SALE OF CITY OWNED PROPERTY

Mayor: Now is the time and a place for a Public Hearing to consider the sale of the City owned Rail Spur and all Appurtenances attached thereto, as described in Exhibit 'A'.

Mayor: I declare the public hearing open at 7:20 PM. I will ask the City Attorney, Tre Kennedy, to present the staff report.

~~Doug~~: (Gives Staff Report)

Mayor: Are there any questions of staff.

Mayor: At this time I will invite any member of the public who would like to speak in FAVOR of this proposed sale to Albany & Eastern RR, and provide your name and address for the record.

Mayor: (After testimony in favor): Now is the time for any member of the public who would like to speak in OPPOSITION of the proposed sale to come forward and provide your name and address for the record.

Mayor: (After testimony) Is there any other member of the public who would like to speak concerning this matter? If not, I declare the public input of this public hearing concluded at 7:29 PM.

Mayor: Are there any further questions of staff?

Mayor: (after questions) At this time the chair will entertain a motion approve the sale to the highest qualified bidder, the Albany & Eastern Railroad for \$1.

City Council: (Makes Motion)

Mayor: It has been moved and seconded to approve the proposed sale, is there any discussion? (after discussion) I will ask the City Clerk to call the role.

ILLEGAL USE OF LEBANON TAX PAYER'S FUNDS

After receiving a request from a citizen, I examined the Lebanon City Charter and found the following disturbing facts. Rules and regulations that the City Council members took an oath to uphold are not being followed. City funds are being used to illegally hire lawyers by unauthorized city personnel and for purposes they will not reveal. The city council has a responsibility to correct this in a manner that does not conflict with the Lebanon City Charter. As I see it thousands of dollars are being spent without the proper authority.

City Council Guide Elected Officials' Roles and Responsibilities

City Attorney

Both the Municipal Judge and City Attorney report directly to the City Council and are not under the Administrative direction of the City Administrator or each other.

Lebanon City Charter: Section 10. Other Officers

Additional officers of the City shall be a City Recorder, a City Attorney, a City Administrator, and in the discretion of the Council, a Municipal Judge and whatever other officers the Council deems necessary. The Municipal Judge, the City Attorney, and the City Administrator shall be appointed by the Council and be responsible to it and the other additional officers shall be appointed by the City Administrator and be responsible to him/her. The Council, as needs dictate, may appoint one or more pro tem Municipal Judges to serve such term as the Council provides.

Lebanon City Charter: Section 6. Where Powers Vested.

Except as the Charter provides otherwise, all powers of the city shall be vested in the Council.

Action needed by the City Council to resolve the following without violating the City Charter:

There is not a charter provision that gives city employees the authority to hire or assign a task to an attorney.

The City Council members are not city employees, they are elected officials.

This is to provide a separation of power.

The City Administrator (John Hitt) at the October 12, 2011 city council meeting admitted he had hired an attorney on his own.

There is no charter provision that allows the city administrator to retain an attorney?

Any public official that expends public money for a different purpose than legally authorized is personally liable for returning the money (ORS 294.100).

Lebanon Charter

- Other Officers: Section 10
 - Additional Officers of the City shall be
 - City Recorder
 - City Attorney
 - City Administrator
 - Municipal Judge – if the Council deems the position necessary



97

Lebanon Charter

- Other Officers: Section 10 cont.
 - Municipal Judge, City Attorney and City Administrator are
 - Appointed by the Council
 - Responsible to the Council
 - Other additional officers are
 - Appointed by the City Administrator
 - Responsible to the City Administrator
 - The Council, as necessary, may appoint one or more pro tem Municipal Judges
 - Compensation for all City officers and employee classifications set by Council



98