

LEBANON CITY COUNCIL AGENDA

July 10, 2013
Regular Session 6 p.m.

Santiam Travel Station
750 3rd Street, Lebanon, Oregon

Mayor Paul Aziz

Council President Bob Elliott
Councilor Rebecca Grizzle

Councilor Jason Bolen
Councilor Wayne Rieskamp

Councilor Floyd Fisher
Councilor Barry Scott

MISSION STATEMENT

The City of Lebanon is dedicated to providing exceptional services and opportunities that enhance the quality of life for present and future members of the community.

CALL TO ORDER / FLAG SALUTE

ROLL CALL

APPROVAL OF CITY COUNCIL MINUTES June 12, 2013 Regular Session

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: City of Lebanon Council Agenda – July 10, 2013

BOARD MINUTES: Bike & Pedestrian Committee – May 23, 2013
Library Advisory Board – April 30, 2013
Planning Commission – May 15, 2013

PROCLAMATION / PRESENTATION / RECOGNITION:

➤ PROCLAMATION: 2013 National Night Out

PUBLIC COMMENTS: *Council welcomes all respectful comments regarding the City's business. Citizens may address the Council by approaching the microphone, signing in, and stating their name and address for the record. Each citizen is provided up to 5 minutes to provide comments. Council may take an additional 2 minutes to respond. The City Clerk will accept and distribute written comments at a speaker's request.*

PUBLIC HEARING(S)

1) **Annexation and Zone Change Request – Weyerhaeuser (File No. 13-05-16)**

Presented by: Walt Wendolowski, Community Development Manager

Approval/Denial by ORDINANCE BILL NO. 2013-3, ORDINANCE NO. 2844

REGULAR SESSION:

2) Approval to Award 5th Street Waterline

Presented by: Ron Whitlatch, Engineering Services Manager
Approval/Denial by MOTION

3) W. Grant Street Parking Restriction

Presented by: Ron Whitlatch, Engineering Services Manager
Approval/Denial by RESOLUTION NO. 2013-30

4) Lebanon Community Foundation – Grant Request Consideration

Presented by: Dean Baugh, Finance Manager
Approval/Denial by MOTION

5) Amending Resolution No. 2013-21, Levying Taxes for FY 2013/14 to Include Delinquent Sewer & Storm Drain Assessments

Presented by: Dean Baugh, Finance Manager
Approval/Denial by RESOLUTION NO. 2013-31

6) City's Contingency Fund

Presented by: Dean Baugh, Finance Manager
DISCUSSION

7) Proposed Disorderly House Ordinance

Presented by: Tre Kennedy, City Attorney
Approval/Denial by ORDINANCE BILL NO. 2013-4, ORDINANCE NO. 2845

8) City Manager Report

Presented by: Jon Nelson, Interim City Manager
DISCUSSION

EXECUTIVE SESSION – *Executive Sessions are closed to the public due to the highly confidential nature of the subject.*

- Per ORS 192.660(2)(h) To consult with counsel concerning the legal rights and duties of the public body with regard to litigation or litigation likely to be filed.

ITEMS FROM COUNCIL

PUBLIC COMMENTS: *An opportunity for citizens to comment on items of city business.*

ADJOURNMENT



NEXT SCHEDULED COUNCIL MEETING(S)

- July 11, 2013 (5 p.m.) EXECUTIVE SESSION: City Manager Candidates COMMUNITY MEET & GREET to follow (Lebanon Public Library Community Room)
- July 12, 2013 (8 a.m.) EXECUTIVE SESSION: City Manager Candidates Interviews (Lebanon Justice Center)
- Aug 14, 2013 (6 p.m.) REGULAR SESSION

Approval of Minutes

LEBANON CITY COUNCIL
MINUTES
June 12, 2013

Council Present: Mayor Paul Aziz and Councilors Jason Bolen, Bob Elliott, Floyd Fisher, Rebecca Grizzle, Wayne Rieskamp and Barry Scott.

Staff Present: Interim City Manager Jon Nelson, City Attorney Tré Kennedy, Engineering Services Manager Ron Whitlatch, Finance Director Dean Baugh, and City Clerk Linda Kaser.

CALL TO ORDER

Mayor Aziz called the Regular Session of the Lebanon City Council to order at 6:00 p.m. in the Santiam Travel Station Board Room.

ROLL CALL

Roll call was taken with all members present.

APPROVAL OF CITY COUNCIL MINUTES

Mayor Aziz corrected the May 8, 2013 Regular Session Minutes:

In response to Mayor Aziz's question, Chief Stevenson reported that, other than normal fights and thefts from time to time, there have been no issues with the businesses up for their annual liquor license renewal.

Councilor Elliott moved, Councilor Scott seconded, to approve the April 24, 2013 Work Session and Regular Session, May 8, 2013 Regular Session, and the May 23, 2013 Regular Session Minutes as amended above. The motion passed unanimously.

CONSENT CALENDAR

AGENDA (as amended): City of Lebanon Council Agenda – June 12, 2013
BOARD MINUTES: Bike & Pedestrian Advisory Board – April 25, 2013
Budget Committee – May 14, 2012
Parks Committee/Tree Board – March 19, 2013 and April 1, 2013
Planning Commission – April 17, 2013

Councilor Rieskamp moved, Councilor Scott seconded, to approve the Agenda as amended and to accept the Consent Calendar as presented. The motion passed unanimously.

PRESENTATION / RECOGNITION

- RECOGNITION: Maya Galegos – 2013 Mayor's Contest Winner – Not present
- PRESENTATION: Lebanon Trails Project Update, presented by Rod Sell and Dr. Thad Nelson

Mr. Sell reported that, partnering with the City, the progress they have been able to make has been incredible. A PowerPoint presentation showed their projects, including those at Cheadle Lake, Marks Slough, the Willamette Industries property, and the connection to the Hospital from Industrial Way. He stated that their goal is to help the City fulfill its Trails Plan of 50 miles of multi-use, fully ADA-accessible and about 20 miles of soft-surface trails. He reported on the group's plans this year and stated that Coach Brad Bauer is proposing to work with BLT and the City to establish a cross-country route.

Dr. Nelson described the Canal Trail Project, which goes from the intersection at the entrance to the medical campus and connects to the origin of Marks Slough. All three private property owners along the trail are donating property to this project. BLT has not yet started a fundraising project, but they currently already have \$53,000 pledged. Rick Franklin will put in the bridge, up to 90 feet, for free and may also put in the trail from the Williams Street bridge to the Industrial Way bridge and the railroad crossing, if rock is provided. Al Sullivan has expressed a willingness to provide the rock at a substantial reduction or for free.

The one hang-up is that the City of Albany is less than eager to have a trail on their property, from Williams Street to Had Irvine Park, because they see the whole canal system as being a liability. The hope is to get this resolved before starting this fall where the intent is to put in the segment of trail, without the bridge, to Williams Street and then from Had Irvine Park to connect to the trail.

There will be a hike along the trail route this Saturday at 10:00 a.m. As a physician, he is very impressed with how many Lebanon residents are now walking, biking and hiking. He thinks this trail will be highly used by citizens, veterans from the new VA home, and those from the medical campus. The intent is to have a connecting trail from Cheadle Lake through to River Park and onto the Marks Slough Trail.

Councilor Grizzle asked whether Albany's resistance is coming from staff or from their Council. Dr. Nelson stated that canal issues between Albany and Lebanon were apparently resolved on Monday, but Albany is still resistant to the idea. He believes something can be worked out because this will benefit both Albany and Lebanon.

Interim City Manager Nelson added that his discussion with Albany City Manager, Wes Hare, was that they are pretty open to considering the benefits of such an arrangement. Staff will be discussing this further in July.

Councilor Bolen expressed his appreciation for the great work BLT has done.

Mayor Aziz asked whether the Council would agree to send a letter to the City of Albany. Interim City Manager Nelson stated that it may come to this, but Mr. Hare wanted to first have a conversation about better agreements concerning the canal, in a bigger sense, and how Lebanon relates to Albany. This may come back in the form of a new agreement for both Albany's and Lebanon's City Councils to consider in the near future.

Mr. Sell pointed out that there are other properties in the Strategic Trails Plan that go through City of Albany property. Another important piece is a long section along the river, north of River Park.

PUBLIC COMMENTS *There were no public comments.*

REGULAR SESSION

1) Approval of City Manager Interview Process

Nelson summarized the seven different points that were discussed. The Council wants to interview five candidates whose names will be released either this Friday or next week, once the executive search firm has had an opportunity to speak with the candidates to confirm their interest.

Council would like to have a tour and reception for the candidates. Mr. Prothman thought it may be better to have all of the candidates with one or two tour guides – possibly a Councilor and/or a staff member – in one bus, rather than trying to accommodate individual tours for each candidate. The reception would be held in the evening on July 11, [2013]. It was suggested that this be open to the public with candidates speaking to everyone. About a half hour before it being open to the public [in Executive Session], there would be an opportunity for the Councilors to meet with the candidates and those spouses that choose to come. Based on the importance of having partners come along with the candidates, Mr. Prothman thought that a stipend of \$850 per candidate would be appropriate.

The interviews would be held on July 12, [2013]. Besides the Council, there will be two other panels. Mr. Prothman suggested that those panels be a mixture of community leaders/citizens and department managers with about eight members on each of the panels. Their purpose will be to provide the Council feedback, focusing more on the strengths and weaknesses of each of the candidates, rather than giving input on their opinion of the best candidate.

After sharing the information with the community following feedback from the different panels, the Council would reconvene and assume their responsibility in executive session to determine whether they would like to make a preliminary offer to one of the candidates interviewed.

Councilor Scott commented that the process makes a lot of sense and covers all bases. He feels the costs are reasonable.

Councilor Scott moved, Councilor Rieskamp seconded, to ADOPT THE CITY MANAGER INTERVIEW PROCESS AS OUTLINED BY NELSON. The motion passed unanimously.

2) Municipal Court Judge Contract Renewal

City Attorney Kennedy presented a new two-year contract with Municipal Court Judge Gerald Waite. The contract was cleaned up to show that it is clearly an independent contractor agreement. His monthly base salary per month was increased from \$3,000 to \$3,400 for July 2013 through June 2014 and \$3,500 for July 2014 through June 2015. Judge Waite extended an invitation to visit the courts and made himself available for questions.

Responding to Mayor Aziz's question, Judge Waite stated that the most difficult part of his job is making the right/fair decision and giving people the opportunity to have their day in court. For the citizens that he sees, it is usually their only contact with the City, so it is important that we provide a fair and open process so that they feel they are being heard.

Councilor Rieskamp asked whether the caseload has changed drastically. Judge Waite stated that it has varied. He thinks there has been a slight decrease in traffic citations because there were fewer officers devoted to traffic. He understands there are now a few more officers, so there should be a little more activity. Criminal cases have been pretty steady. There may be some increase but nothing significant.

Councilor Bolen moved, Councilor Grizzle seconded, to APPROVE THE TWO-YEAR CONTRACT FOR THE MUNICIPAL COURT JUDGE CONTRACT RENEWAL AS PRESENTED. The motion passed unanimously.

PUBLIC HEARING(S)

3) Revised City Fees' Schedule

Mayor Aziz declared the Public Hearing open at 6:38 p.m.

City Clerk Kaser presented the proposed changes to the City fee structure as outlined.

Mayor Aziz asked whether there is any difference in media copying fees. Kaser stated that staff collectively decided that even though this does not quite cover the actual costs involved, we reduced the fee so that it would better meet the desire of the community. Nelson added that staff wanted to make it consistent across all of the different departments. As far as the media, Kaser stated that charging for documents is not usually warranted as more documents are available online or are already scanned and easily emailed. If not, staff provides the press with the option to come in and review the documents rather than charging a copying fee. We work with the press as much as possible.

Councilor Rieskamp asked whether the new utility late fee charge will be less for the average user. Finance Director Baugh stated that the new fee would be less for an average bill of \$120, but it would be much higher for larger bills. Nelson pointed out that this schedule may be adjusted after discussion on the survey results, which Baugh stated would be at the August Council meeting.

Kaser announced that this was noticed for a public hearing with the option to receive written comments if unable to attend. She did not receive any written comments.

Hearing no public comments, the Hearing was closed at 6:44 p.m.

There was Council consensus to make the new fee structure effective September 1, 2013.

Kennedy read the title of **Resolution No. 2013-18. Councilor Elliott moved, Councilor Fisher seconded, to APPROVE RESOLUTION NO. 2013-18 A RESOLUTION AMENDING FEES AND CHARGES FOR CITY SERVICES as amended. The motion passed unanimously.**

4) State Revenue Sharing

Baugh explained the process and requested approval of a resolution, which certifies that the City is eligible to receive the funds, and approval of an ordinance, which states that the City elects to receive those funds.

Mayor Aziz declared the Public Hearing open at 6:48 p.m. Hearing no public comments on the resolution, the Hearing was closed at 6:48 p.m.

Kennedy read the title of RESOLUTION NO. 2013-19. Councilor Grizzle moved, Councilor Rieskamp seconded, to APPROVE RESOLUTION NO. 2013-19 A RESOLUTION CERTIFYING THE CITY OF LEBANON PROVIDES MUNICIPAL SERVICES FOR ELIGIBILITY IN RECEIVING STATE SHARED REVENUE PAYMENTS. The motion passed unanimously.

Mayor Aziz declared the Public Hearing open at 6:49 p.m. Hearing no public comments on the ordinance, the Hearing was closed at 6:49 p.m.

Kennedy read the title of ORDINANCE BILL NO. 2013-2, ORDINANCE NO. 2843. Councilor Grizzle moved,

Councilor Scott seconded, to APPROVE ORDINANCE BILL NO. 2013-2, ORDINANCE NO. 2843 A BILL FOR AN ORDINANCE DECLARING THE CITY OF LEBANON'S ELECTION TO RECEIVE STATE FUNDS. The motion passed unanimously.

DRAFT

5) Adoption of FY 13/14 Approved Budget (Making Appropriations and Levying Taxes)

Baugh requested Council consideration to adopt the FY 13/14 Budget approved by the Budget Committee. It includes the \$50,000 change that the Budget Committee recommended to be moved over to reserves for the future park shelter rebuild.

Baugh gave a summary of staff changes made after the Committee approved the proposed budget. Each of the changes is below the State restriction of \$5,000 or 10% change, whichever is greater. The changes are:

Enterprise Fund – decrease of \$780,000 to \$17,691,331 resulting from the projected water rate increase from 10% to 0%

Revenue – decreased by \$780,000

Transfers Out – decreased by \$390,000

Improvements – decreased by \$390,000

Special Revenue Fund – increase of \$5,000 to \$6,022,091

Revenue – increased by \$5,000

Materials & Services – increased by \$5,000

Baugh announced that the Police Department requested that a fund be set aside for their new program, but it will not receive General Fund money. Lebanon Community Foundation (LCF) requested a \$25,000 grant for completion of their Power Backbone project. He noted that this would reduce the contingency fund to about 9%.

Mayor Aziz declared the Public Hearing open at 6:54 p.m. Hearing no public comments, the Hearing was closed at 6:55 p.m.

Mayor Aziz stated that the LCF request/letter was presented to him a couple of weeks ago. He is in favor of Cheadle Lake receiving this money because he feels that this is something positive for our community. The letter was unfortunately not in time for the Budget Committee Meeting.

Councilor Grizzle recalled her previous days on Council and the formation of the Tourism Committee. She stated that she is afraid that approving requests for grants from several good committees starts a bad precedence. She feels that it is responsible of the Council to have the 10% contingency.

Lebanon Chamber of Commerce Director Shelly Garrett stated that the Tourism Committee, funded by the City, has been very steadfast about doing what former Councilor Miller requested (support LCF's efforts at Cheadle Lake). She described the Committee's process to determine how requests are approved.

Cheadle Lake projects have received \$28,000 from the Tourism Committee since 2002. The Committee also matched the BLT grant. They are really cognizant of trying to meet the growing needs of Lebanon and feel that with the economic development direction Lebanon is going in, Cheadle Lake will bring in nontraditional income and different people into the community.

Councilor Scott seconded Councilor Grizzle's point. He also supports LCF but has reservations about using contingency. It may also make sense to look long term and build a true contingency fund that bases appropriations on history and need. Baugh stated that the contingency fund discussion will be held in August or September.

Councilor Fisher agreed with Councilors Scott and Grizzle. He encouraged the Council not to use the contingency fund because he is bothered that it is dropping.

Councilor Rieskamp stated that LCF has raised funds and developed the public works component of developing the park in excess of \$1 million. They just finished a \$200,000 Power Backbone to enhance the use of the park and to maintain the ball field complex and amphitheater that will be developed in the next year or two. They are asking for this support since the cost came in above their budget, due to codes and equipment deed. LCF appreciates the City's support of Cheadle Lake, but without this funding, capital improvements will cease this month. The well needs to be finished for the irrigation and for the development of future restrooms. Cheadle Lake will eventually become a City park.

He does not totally agree that it has to come out of contingency. PERS funds that the City does not have to pay this year would cover the cost of this, as well as some other areas in the budget.

They seldom asked for any City dollars from the initial grants in the development of Weirich Road and the sewer they helped put down and paid for the railroad crossing in partnership with the County and City. They raised a little over \$3.5 million for infrastructure to do this. Volunteer efforts have been going on for 15 years. They are a volunteer group of a small board who has made positive changes in the Park and brought events to the community and people to spend money in Lebanon. They expect to exceed the 40,000 people who used the park last year.

Councilor Scott commented that, to do a project of this nature, it is hard to imagine that \$25,000 cannot be found in a \$35 million budget. He asked if there are other areas to find this money. Nelson reported that the PERS change will result in funds greater than \$25,000.

Councilor Grizzle suggested that this wait until next month when there are finalized figures on the PERS change.

Councilor Elliott stated that he would not like to see anything more taken from contingency, but he is in favor of the program, if funding can be found elsewhere.

Kennedy read the title of **Resolution No. 2013-20 (Making Appropriations)** as amended. *Councilor Grizzle moved, Councilor Elliott seconded, to APPROVE RESOLUTION NO. 2013-20 A RESOLUTION ADOPTING THE CITY OF LEBANON'S BUDGET AND MAKING APPROPRIATIONS FOR FY 2013-14 AS AMENDED (NEW WATER RATES AND POLICE DEPARTMENT CHANGE. THE AMENDMENT ALSO INCLUDES A \$25,000 GRANT TO LCF SUBJECT TO FURTHER STAFF AND COUNCIL ACTION). The motion passed unanimously.*

Baugh will bring back an update on the PERS rates to the next City Council Meeting, at which time Council will determine if it is feasible to grant the \$25,000 request from the Cheadle Lake Foundation.

Baugh announced that this is a resolution to approve the tax levy. The City is asking for 100% of the taxes as authorized.

Mayor Aziz declared the Public Hearing open at 7:17 p.m. Hearing no public comments, the Hearing was closed at 7:17 p.m.

Kennedy read the title of **RESOLUTION NO. 2013-21 (Levying Taxes)**. *Councilor Elliott moved, Councilor Fisher seconded, to APPROVE RESOLUTION NO. 2013-21 A RESOLUTION LEVYING TAXES FOR THE CITY OF LEBANON'S BUDGET FOR FISCAL YEAR 2013-14. The motion passed unanimously.*

Mayor Aziz called for a 10-minute recess. The meeting was called back to order at 7:31 p.m.

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

6) **Adoption of FY 13/14 NW Lebanon Urban Renewal District Approved Budget (Making Appropriations and Levying Taxes) as Lebanon Urban Renewal Agency**

Baugh presented a resolution levying taxes for the NW Lebanon URD Budget for FY 13/14 [\$16,601,622] passed by the Budget Committee.

Staff is also requesting an amendment because at the time the budget was prepared, the City had to pay \$2.3 million as part of the Lowe's payment for the wetlands mitigation. The whole payment will now be paid out of the bond that will be issued in July.

\$1.66 million is being brought forward because the City is limited to \$5000 or a 10% change, whichever is greater. The balance of \$800,000 will not be spent this year and not carried forward to next year, so a budget amendment will have to be done next year. Engineering Services Manager Whitlatch assured him that there are a few projects that might be able to be paid for by the end of June.

The amended resolution is in the packet, but the date should be July 1, 2013, not 2012. Nelson added that the first paragraph of the amended resolution should read \$18,301,622 to match the detail below.

Mayor Aziz declared the Public Hearing open at 7:35 p.m. to consider adoption of the NW Lebanon URD FY 13/14 Budget. Hearing no public comments, the Hearing was closed at 7:36 p.m.

Kennedy read the title of **RESOLUTION NO. 2013-22 (Making Appropriations)** as amended. *Councilor Grizzle moved, Councilor Elliott seconded to APPROVE RESOLUTION NO. 2013-22 A RESOLUTION ADOPTING THE NORTHWEST LEBANON URBAN RENEWAL DISTRICT BUDGET AND MAKING APPROPRIATIONS FOR FISCAL YEAR 2013-14, AS AMENDED TO REFLECT THE ADDITIONAL \$1.66 MILLION. The motion passed unanimously.*

Baugh stated that the City is asking for 100% of the authorized levy.

Mayor Aziz declared the Public Hearing open at 7:39 p.m. Hearing no public comments, the Hearing was closed at 7:39 p.m.

Kennedy read the title of **RESOLUTION NO. 2013-23 (Levying Taxes)**. *Councilor Rieskamp moved, Councilor Elliott seconded, to APPROVE RESOLUTION NO. 2013-23 A RESOLUTION LEVYING TAXES FOR THE CITY OF LEBANON'S NORTHWEST URBAN RENEWAL DISTRICT BUDGET FOR FISCAL YEAR 2013-14. The motion passed unanimously.*

7) **Adoption of FY 13/14 Cheadle Lake Urban Renewal District Approved Budget (Making Appropriations and Levying Taxes) as Lebanon Urban Renewal Agency**

Baugh stated that the budget amount is the same as the amount approved by the Budget Committee. The City is requesting 100% of the authorized levy this year.

Mayor Aziz declared the Public Hearing open at 7:40 p.m. Hearing no public comments, the Hearing was closed at 7:41 p.m.

Kennedy read the title of **RESOLUTION NO. 2013-24 (Making Appropriations)**. *Councilor Grizzle moved, Councilor Bolen seconded, to APPROVE RESOLUTION NO. 2013-24 A RESOLUTION ADOPTING THE CHEADLE LAKE URBAN RENEWAL DISTRICT BUDGET AND MAKING APPROPRIATIONS FOR FISCAL*

YEAR 2013-14. The motion passed unanimously.

Mayor Aziz declared the Public Hearing open at 7:41 p.m. Hearing no public comments, the Hearing was closed at 7:42 p.m.

Kennedy read the title of RESOLUTION NO. 2013-25 (Levying Taxes). **Councilor Elliott moved, Councilor Rieskamp seconded, to APPROVE RESOLUTION NO. 2013-25 A RESOLUTION LEVYING TAXES FOR THE CITY OF LEBANON'S CHEADLE LAKE URBAN RENEWAL DISTRICT BUDGET FOR FISCAL YEAR 2013-14. The motion passed unanimously.**

Baugh pointed out that an IGA was not needed this year because the Cheadle Lake URD now has some debt with the Marathon Apartment complex.

8) Adoption of FY 13/14 North Gateway Urban Renewal District Approved Budget (Making Appropriations and Levying Taxes) as Lebanon Urban Renewal Agency

Mayor Aziz declared the Public Hearing open at 7:43 p.m. and asked for public comment.

Ray Weldon, 1610 S. 4th Street, Lebanon, recalled when he was on the City Council and asked about the status of the Lebanon Community Hospital infrastructure repayment.

Baugh indicated that the City has an agreement with the Hospital to repay them for infrastructure that was put in at the Hospital site. This is a total of a 20-year contract with a payment schedule. It is in this year's budget to pay them about \$100,000, which is a normal one-year payment.

Responding to Mr. Weldon's question, Baugh stated that the total amount is not yet known; it depends on what public infrastructure is put in.

Nelson stated that the agreement with Samaritan Health Services has the Hospital fronting the money for public infrastructure. What the City is doing, through this agreement, is repaying the Hospital. This was done because there was not enough taxable value in the URD to provide the cash flow for the City to carry the debt. The tax increment is used to repay them back on a multi-million dollar contract over 20 years.

Mr. Weldon commented that the City has no idea what will be owed. Nelson stated that he recalls one of the estimates to be \$5.1 million over the next 20 years, but it is pledged by the tax increment and not by the General Fund. This was a debt obligation that was agreed to by the City four years ago.

Baugh clarified for Mr. Weldon that the City had the funds for last year's payment, but it was not included in the budget because it was unknown what SHS was going to ask for.

Hearing no further public comments, Mayor Aziz closed the Public Hearing at 7:49 p.m.

Kennedy read the title of RESOLUTION NO. 2013-26 (Making Appropriations). **Councilor Elliott moved, Councilor Grizzle seconded, to APPROVE RESOLUTION NO. 2013-26 A RESOLUTION ADOPTING THE NORTH GATEWAY URBAN RENEWAL DISTRICT BUDGET AND MAKING APPROPRIATIONS FOR FISCAL YEAR 2013-14. The motion passed unanimously.**

Baugh stated that the budget amount of \$234,235 is the same as the amount approved by the Budget Committee. The City is asking for 100% of the levy, as in the past.

Mayor Aziz declared the Public Hearing open at 7:51 p.m. Hearing no public comments, he closed the Public Hearing at 7:51 p.m.

Kennedy read the title of **RESOLUTION NO. 2013-27** (Levying Taxes). *Councilor Grizzle moved, Councilor Fisher seconded, to APPROVE RESOLUTION NO. 2013-27 A RESOLUTION LEVYING TAXES FOR THE CITY OF LEBANON'S NORTH GATEWAY URBAN RENEWAL DISTRICT BUDGET FOR FISCAL YEAR 2013-14. The motion passed unanimously.*

9) Authorization of IGA with City of Lebanon (\$12M Bond)

Baugh presented an intergovernmental agreement whereby the Urban Renewal Agency shall transfer to the City tax increment revenues and proceeds of the Agency in amounts and at times that are sufficient to allow the City to pay all of the amounts due under the 2013 obligations that relate to the Project. The Agency and the City have undertaken, or are currently planning, projects set forth in the Northwest Lebanon Urban Renewal Plan, including financing improvements to the City's water system, transportation system, and payments related to land associated with the Lowe's distribution center.

The City is planning to enter into a tax-exempt financing agreement and escrow agreement providing for the issuance of Full Faith and Credit Obligations, in an aggregate principal amount not to exceed \$12,100,000 to finance the projects.

Nelson referred to the ECO Northwest memo which showed that, under any of the Lowe's appeal scenarios, the tax increment would provide for the debt service associated with the bond. Baugh added that this is under the assumption that it is extended from a 10-year to a 15-year bond.

Mayor Aziz declared the Public Hearing open at 7:56 p.m. Hearing no public comments, he closed the Public Hearing at 7:56 p.m.

Kennedy read the title of **RESOLUTION NO. 2013-28**. *Councilor Grizzle moved, Councilor Scott seconded, to APPROVE RESOLUTION NO. 2013-28 A RESOLUTION OF THE CITY OF LEBANON'S URBAN RENEWAL AGENCY, LINN COUNTY, OREGON AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF LEBANON, LINN COUNTY, OREGON REGARDING THE TRANSFER OF TAX INCREMENT REVENUES AND PROCEEDS TO THE CITY FOR THE PURPOSE OF PAYING OBLIGATION FINANCING OF THE CITY. The motion passed unanimously.*

Mayor Aziz adjourned as the Urban Renewal Agency Board and reconvened as the Lebanon City Council.

10) Amending Resolution 2013-17 for Issuance of \$12M Bond and Authorization of IGA with Urban Renewal Agency

Baugh briefed Council on an amended resolution authorizing the issuance and negotiated sale of full faith and credit and refunding obligations for the purpose of financing capital improvements and refunding certain outstanding obligations of the City; authorizing interim financing; designating an authorized representative, underwriter and special counsel; authorizing execution and delivery of a financing agreement an escrow agreement and interim financing agreement; authorizing intergovernmental agreement with the City of Lebanon Urban Renewal Agency; and related matter. The change from the original resolution is the increase in the authorized line of credit from \$3,000,000 to \$10,000,000.

The resolution authorizes the refinancing of the following debt: \$1,990,000 remaining balance of the 2003 Series wastewater bond; \$1,910,000 remaining balance of the 2004 Series Special water bond; and the issuance of \$12,000,000 new money, for the purpose of financing improvements through the Northwest URD. Proposed projects listed below (list may change as plans are updated):

Payment to Lowes for fill material – \$10,000,000
Fifth Street Water Reservoir – \$2,000,000
Westside Interceptor Phase IV – TBD
Water Treatment Plant Design – TBD
Oak Street Improvements – TBD
Airway Road Improvements – TBD

Mayor Aziz declared the Public Hearing open at 7:59 p.m. Hearing no public comments, he closed the Public Hearing at 7:59 p.m.

Kennedy read the title of the amended and restated **RESOLUTION NO. 2013-29**. *Councilor Elliott moved, Councilor Rieskamp seconded, to APPROVE RESOLUTION NO. 2013-29 A RESOLUTION AMENDING RESOLUTION 2013-17 AUTHORIZING THE NEGOTIATED ISSUANCE AND NEGOTIATED SALE OF FULL FAITH AND CREDIT AND REFUNDING OBLIGATIONS FOR THE PURPOSE OF FINANCING CAPITAL IMPROVEMENTS AND REFUNDING CERTAIN OUTSTANDING OBLIGATIONS OF THE CITY; AUTHORIZING INTERIM FINANCING; DESIGNATING AN AUTHORIZED REPRESENTATIVE, UNDERWRITER AND SPECIAL COUNSEL; AUTHORIZING EXECUTION AND DELIVERY OF A FINANCING AGREEMENT, AN ESCROW AGREEMENT, AND INTERIM FINANCING AGREEMENT; AUTHORIZING INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF LEBANON URBAN RENEWAL AGENCY; AND RELATED MATTERS. The motion passed unanimously.*

REGULAR SESSION

11) Utility Billing Collection Survey

Baugh presented a draft Utility Billing Collections Survey for Council's consideration.

Responding to Councilor Grizzle's question, Kaser indicated that the survey will be on Survey Monkey. Citizens will be directed there through the City's Web and Facebook pages. Baugh confirmed for Councilor Grizzle that this information will be included on the utility billing statements as well.

Mayor Aziz commented that he likes the questions, but he would like to see one last question where someone could leave additional comment.

Council agreed to move forward with the survey, with the addition of the comment section.

12) CH2M Hill / OMI Contract Amendment

Whitlatch stated that staff recommends Council pass a motion approving an amendment to the CH2M Hill contract for operation of both the water and wastewater treatment plants. The overall increase of 3.0% is due primarily to the increase in power demands from recently completed projects and from the inflationary increases of chemicals and labor.

Mayor Aziz asked whether their contract is year-to-year. Whitlatch stated that he believes it is a 20-year contract with a 10-year renewal and annual amendments.

Responding to Councilor Scott's question, Whitlatch stated that he thinks we are in about the sixth year of the 10-year period.

Councilor Bolen moved, Councilor Elliott seconded, to APPROVE THE AMENDMENT TO THE CH2M HILL CONTRACT. The motion passed unanimously.

13) Approval to Award Hobbs Street Drainage Improvements and Arlene Avenue Neighborhood Improvements

Whitlatch distributed a replacement memo with bid results and requested that Council pass a motion to award the Hobbs Street Drainage Improvements and Arlene Avenue Neighborhood Improvements Project to Delta Construction for \$641,000. This contractor is also doing the work on the VA Hospital.

In response to Councilor Elliott's question, Whitlatch stated that the City has not worked with Delta before, but they are a reputable company.

Councilor Bolen moved, Councilor Grizzle seconded, to AWARD THE HOBBS STREET PROJECT CONTRACT TO DELTA CONSTRUCTION FOR \$641,000.00. The motion passed unanimously.

14) Approval of Communications Plan

Mayor Aziz submitted a draft Communications Plan for Council approval. This would provide the groundwork for how we communicate internally with staff, with the public, and with the press. There are things that can be improved upon or added over time, but he really likes the plan. He would also like to see having an employee newsletter as a goal.

Councilor Bolen thanked Mayor Aziz for his effort in starting this. He stated that it is a great step towards the transparency and open communication that the citizens want.

Councilor Scott asked for staff comments. Nelson stated that this is a good game plan. It lists the different tools available; it will come down to staffing and budget resources necessary to expand what is being done now.

Mayor Aziz noted that there are many things in place, so resources will need to be put towards some of the little things. He has been receiving good comments on the YouTube videos, which are averaging 50 or 60 views per meeting. Total viewing time is in the thousands of minutes since starting in February. There is now a Facebook page for the City, the Police Department, the Library and, just recently, the Senior Center.

Councilor Bolen asked whether this is on or will go on the City website or Facebook page. Mayor Aziz stated that it will, if approved.

Councilor Bolen moved, Councilor Grizzle seconded, to APPROVE THE COMMUNICATIONS PLAN AS PRESENTED, WITH AN EFFECTIVE DATE OF JULY 1, 2013. The motion passed unanimously.

15) City Managers Report

Mayor Aziz announced that this is the best and most concise report he has ever seen from a City Manager. He

was very pleased because there are many little things in the report that he did not know was going on. He also commended the staff reporting. Nelson stated that this was the result of a request to the department heads to provide highlights of the last month in half to three-quarters of a page. This is something that can be shared with the public via the City website. It is also a good product to push out to certain partners as well.

Councilor Grizzle added that staff may also like to know what is going on in other departments. Nelson agreed and suggested sending this to all City employees.

Nelson reported that Lowe's responded to Lebanon's three requests and approved the extension from July to September 1, 2013. A letter confirming and thanking Lowe's for this action is also included.

Nelson stated that the highlights in the Manager's Reports were the budget work.

He reminded the Council that he will be gone the last two weeks in June, due to prior family commitments.

ITEMS FROM COUNCIL

Councilor Scott thanked staff for the good staff reports and information addressed in the City Manager's Report.

PUBLIC COMMENTS

Michael Maynard, 93 W. Olive Street, Lebanon, Vice-President of the Lebanon Professional Firefighters, asked for clarification about the bond extension.

Nelson indicated that the original bond previously approved was a 10-year bond. To make the debt service fit within available tax revenue under the worst case scenario, this bond has now been extended to a 15-year term.

ADJOURNMENT

Mayor Aziz adjourned the meeting at 8:30 p.m.

[Minutes prepared by Linda Kaser & Donna Trippett]

Minutes Approved by the Lebanon City Council on this 10th day of July, 2013.

Paul R. Aziz, Mayor	<input type="checkbox"/>
Bob Elliott, Council President	<input type="checkbox"/>

ATTESTED:

Linda Kaser, City Clerk

DRAFT

Board & Committee
Meeting Minutes

**CITY OF LEBANON
BICYCLE AND PEDESTRIAN ADVISORY BOARD
MEETING MINUTES
MAY 23, 2013**

Present were Linda Martin, Bob Burt, Damon Tempey, and Barbi Thomson. Linda called the meeting to order at 7:03 p.m.

Minutes: The minutes from the April 25, 2013 meeting were approved unanimously.

Public Input: None.

Survey Updates: Bob asked if anyone had heard the survey advertised on the radio but no one had. Damon took several copies to the fire station at their recent Open House. Linda will try to contact the medical school students again regarding their participation. Barbi said that the Chamber had emailed their membership list, it was mentioned twice in the Lebanon paper and once in the Albany paper, and DriveLessConnect emailed the survey to their membership list.

After the survey is over, we will analyze the data and set up a time to present it to City Council.

Other Business: Linda reminded people that the Chairperson position she currently holds will be open in July. She does not plan to hold the position again next year.

With no further business the meeting was adjourned at 7:28 p.m. The next meeting will be 7:00 p.m., June 27, 2013 at the Santiam Travel Station.

Respectfully submitted,

Barbi Thomson
Secretary

Minutes

Lebanon Public Library Advisory Committee

April 30, 2013

Present: Cathy Benneth, Delvin King, Kathy Pointer, Sue Spiker, Carol Dinges

Absent: Garry Browning, Harlan Mastenbrook

1. Meeting was called to order at 4:35 pm by Sue Spiker, Chair pro tem.
2. Minutes of the April 9, 2013 meeting were approved.
3. Library manager's report:
 - a. Statistical report
 - Since the meeting date was moved ahead from the regularly scheduled date (5/14), the April statistics were not available yet. They will be presented at the June meeting.
 - The committee reviewed the March financial statistics (Trust accounts), which had not been available at the April meeting.
 - b. Updates
 - 2013-14 budget process
 1. The committee reviewed the proposed balanced budget that finance director Dean Baugh prepared, which showed most of the library's operating budget remaining the same as this year, with increases for utilities and equipment replacement.
 2. The budget committee hearings are scheduled for May 13 at 6:30 pm, with an additional hearing on May 14 if needed. Cathy Benneth, Kathy Pointer, and Sue Spiker will attend, as will Kendra Antila and Jaime Oakeson (library staff). Carol plans to be available via e-mail and Skype to answer questions if necessary.

3. Today is John Hitt's last day, and interim City Manager Jon Nelson has been working for a little over a week. He has toured the library and will be meeting with Carol to talk about library issues in more depth on Thursday afternoon.

c. Programming events

- "Nutrition Made Easy" (May 13 @ 7 pm) – the final session of this series will cover common myths about nutrition and shopping tips.
- "Lebanon's Gift of Literacy" (May 28) – Lebanon Public Library is a co-sponsor

4. Friends of the Library report: Harlan wasn't present to give a report.

5. Communications: none

6. Committee Reports: none

7. Unfinished business: none

8. New business:

a. Policy Manual:

- "Service Animals" (p. 18): The policy manual currently prohibits bringing "pets inside the building except those trained for the handicapped." This needs to be clarified to prohibit animals that do not fit the legal definition of "service animal." Carol will bring specific wording to the next meeting after having City Attorney Tré Kennedy review it.
- A motion to recommend that patrons sign a log to certify that an animal is a legally defined service animal was made by Cathy Benneth, seconded by Delvin King, and passed unanimously. The committee felt that this might mitigate the library's liability should an animal bite or otherwise harm another patron. Carol will discuss this with Tré Kennedy and report back at the May meeting.

- A motion to change the circulation policy for “Theme Kits” (p. 21) to limit circulation to one per household was made by Kathy Pointer and seconded by Cathy Benneth. The motion passed unanimously.
- The policy manual does not currently address copyright issues. Sony and other companies have attempted to hold some Oregon public libraries liable for illegal downloading and other copyright violations by patrons. The committee directed Carol to do the following:
 1. write a statement condemning acts of copyright infringement and disclaiming liability for acts done by users, as recommended by the City Attorney;
 2. post a copyright notice by the patron printer/copier;
 3. have a copyright statement that patrons need to agree to prior to logging on to a patron-access computer or library-provided wifi.

9. Public comments: None

10. Adjournment: 5:35 pm

Next meeting: June 11, 2013 @ 4:30 pm
Library Community Meeting Room



City of Lebanon
Planning Commission
Meeting Minutes
May 15, 2013

Members Present: Commissioners John Brown, Brian Daniels, Walt Rebmann, Don Robertson and Jeremy Salvage

Staff Present: Community Development Manager Walt Wendolowski, City Attorney John Tré Kennedy, Engineering Services Manager Ron Whitlatch and CPT Office Assistant Tammy Dickey

1. FLAG SALUTE / CALL TO ORDER

Chairman Robertson called the meeting of the Lebanon Planning Commission to order at 6:30 pm in the Santiam Travel Station Board Room at 750 3rd Street.

2. ROLL CALL

Roll call was taken; Commissioners Cornell and Reineccius were absent.

3. APPROVAL OF MEETING MINUTES

The April 17, 2013 Meeting minutes were approved as presented.

4. CITIZEN COMMENTS – *There were none.*

5. PUBLIC HEARINGS

City Attorney Kennedy announced that the quasi-judicial hearing procedures are posted on the wall. They are followed to ensure that everyone has a fair opportunity to present their case and that the Commission abides by Oregon law. He reviewed the process and pointed out that all testimony or evidence must be directed toward the criteria described in the staff report or other criteria in the Comprehensive Plan or Land Use Regulation. Failure to raise an issue, including Constitutional or other issues related to the proposed conditions of approval, if any, accompanied by statements or evidence sufficient to afford the Commission and the parties an opportunity to respond to the issues, precludes an appeal to the Land Use Board of Appeals. There were no questions.

A. Modification to PD-08-03, 10-10-52 and 11-12-95 (13-04-14) – Samaritan Health Services

Chairman Robertson opened the Public Hearing and asked for any ex parte contacts, conflicts of interest or bias. There were none.

Community Development Manager Wendolowski presented the staff report for the Samaritan Health Services modification, which includes the following: 1) construction of two 20,000 office/retail buildings in Planning Area II; 2) construction of a 10,000 sq. ft. 400-seat event center in Planning Area III; 3) construction of a 54,000 sq. ft. college building in Planning Area V; and 4) construction of a 55,000 sq. ft. 120-room hotel, a 10,000 sq. ft. sit-down restaurant/retail space building and a one-acre healing garden in Planning Area V1.

The site is located along Highway 20, across from the Samaritan Lebanon Community Hospital. The property is zoned Mixed Use (Z-MU). The City approved Planned Development 08-03 to establish a medical college with ancillary residential, office, medical and commercial structures. This decision involved 55.7 acres of property, with the initial approval limited to the approximate 46 acres of the land located on the east side of 5th Street.

The City approved four subsequent partitions creating separate parcels for the medical college, credit union, Mullins Way commercial building and the kidney dialysis center. The applicant also received four approvals modifying the original plan:

1. Planning File #10-10-52 – This modification to Area II eliminated a single, 20,000 sq. ft. building, replacing it with two smaller buildings: one at 3,000 sq. ft. with a drive-through (credit union) and a second at 13,500 sq. ft.
2. Planning File #10-12-68 – This modification to Area III and Area VI reduced the size of commercial Building #3 from 25,000 to 17,000 sq. ft. and reduced the size of the proposed hotel from 73,000 to 60,500 sq. ft. The modification also established two 12,000 sq. ft. retail/office buildings on the north side of Mullins Drive, one of which was recently completed.
3. Planning File 11-12-95 – This modified Planned Development 08-03 and Planning File 10-10-52 by establishing five buildings in Area II where the original plan contained only three structures. Improvements included an 8,850 sq. ft. medical office, a 6,400 sq. ft. commercial building with drive-through facilities and an overall reduction in building area from 75,000 to 45,850 sq. ft.
4. Planning File 12-08-45 - The applicant received General Plan approval to construct a 156-bed veterans' home on the 12.41-acre parcel located to the west of 5th Street (subsequently renamed Patriots' Place).

The applicant now wishes to further modify Planned Development File 08-03; and, Planning Files 10-12-68 and 11-12-95. The proposal includes the following:

1. Planning File 11-12-95 created two, single-story 10,000 sq. ft. buildings in Area II and an 8,850 sq. ft. medical building. The modification increases the 10,000 sq. ft. building to 20,000 sq. ft. in area by adding a second story and expands the medical building to 9,200 sq. ft. The 11,000 sq. ft. Office/Retail Building #3 would be eliminated.
2. Planning File 10-12-68 will be modified by relocating the event center from Area VI (southeast corner) to Area III (directly to the north) and reducing the building size from 18,000 to 10,000 sq. ft.
3. An additional college building will be constructed to the west of the existing medical college in Area V (south end of the site). However, the building will be reduced in size from 70,000 to 54,000 sq. ft.
4. The proposal amends Area VI of Planning File 10-12-68 by relocating the hotel from Area III to Area VI. The number of rooms will increase from 110 to 120 while the building size is reduced from 60,500 to 55,000 sq. ft. An approved one-acre healing garden will be located to the east of this hotel. Office/Retail Building #6 (located to the west of entrance) will be reduced from 12,000 to 10,000 sq. ft. in area. This will be divided into two 5,000 sq. ft. spaces, with one space designated for a restaurant.

As a result of these changes, total building square footage in the above subject areas will be

reduced by 22,500 sq. ft.

Development Engineering requested that all improvements comply with City Public Works standards, the applicant provide water demand calculations, the site improvements conform to Lebanon Fire District and ADA requirements, and landscaping comply with clear vision requirements. The Lebanon F.D. reviewed the proposal and did not submit comments. Material was sent to ODOT, at their request, but they did not submit comments.

This application essentially involves two separate actions: (1) whether the proposed revision complies with the modification requirements in the Development Code; and if so, (2) whether the modification conforms to the decision criteria establishing the planned development.

Chapter 16.24 establishes the standards for reviewing a modification request to an approved land use decision. The staff report contains specific findings; a brief summary follows:

1. The application meets the applicability provisions of Chapter 16.24.
2. The proposal does not change proposed land uses, significantly increase area impacts, or change property boundaries. As will be shown, the modifications continue to conform to the original Zoning Ordinance requirements.
3. Based on these factors, the applicant is not required to submit a new application but may modify the original request. Further, the Commission must review this request as it approved the original application.

The modification must be reviewed against the previous Zoning Ordinance criteria. The staff report contains specific findings; a brief summary follows:

1. The parcel exceeds 2 acres, requiring a PD and Commission review.
2. The proposed uses are consistent with allowable activities in the MU zone and the original approval's proposed office/commercial/institutional uses.
3. The proposed buildings and uses conform to applicable development requirements of the MU zone, do not violate clear-vision provisions, nor alter landscaping plans for the project. With a reduction in building area, the available parking will exceed minimum requirements. Required bicycle parking is also not reduced. Staff also reviews exterior lighting requirements and sign requirements when building plans are submitted.
4. The Lebanon Zoning Ordinance required the proposed development to be in conformance with the 2004 Lebanon Comprehensive Plan. Findings in the previous decision address all the Comprehensive Plan conformance issues. Since the proposal does not alter the allowed land uses and essentially remains consistent with the intent and purpose of the project, staff concludes those prior findings apply to the modification.

Based on these factors, staff recommends the Commission approve the Modifications, subject to the findings and conditions noted in the Staff Report.

Hearing no Commissioner comments or questions, Chairman Robertson opened the public testimony portion of the Hearing and invited the applicant or the applicant's representative to come forward.

Lyle Hutchens, Devco Engineering, the applicant's representative, summarized that this application

is really a reorganization of some of the uses and buildings previously approved, with the addition of what will be a world class healing garden as an amenity to the whole health sciences campus. They are in agreement with the conclusions and recommendations in the Staff Report and ask for Planning Commission approval.

He stated that everyone probably noticed that they were pretty presumptuous in starting one of the building pads in order to meet their schedules.

In response to Vice-Chairman Salvage's question, Mr. Hutchens stated that it was the event center building that was started. He confirmed for Chairman Robertson that this project has a very aggressive timeline.

Mr. Hutchens thanked Wendolowski, Engineering Services Manager Whitlatch, CPT Office Assistant Dickey and all City staff for their guidance on how to keep things on track to get these processes through.

Hearing no comments in favor of or in opposition to the application, Chairman Robertson closed the Public Hearing. He announced that all further discussion will be between the Commission and staff.

All of the Commissioners felt that the application met the criteria, as far as the modifications.

Vice-Chairman Salvage moved, Commissioner Brown seconded, that the Planning Commission adopt the Proposed Findings and Conditions contained in the Staff Report and approve the applicant's request, in Planning Case 13-04-14, as submitted.

The motion passed unanimously.

B. Tentative Subdivision Plat (13-04-15) – Ridgeway Butte, LLC

Chairman Robertson opened the Public Hearing at 6:34 pm and asked for any ex parte contacts, conflicts of interest or bias. There were none.

Kennedy reiterated that the quasi-judicial hearing procedures apply. He addressed the few people who came in late, saying that the procedures are posted on the wall, if they had any questions.

Wendolowski presented the staff report for a tentative Subdivision Plat (13-04-15) that includes 132 single-family residential lots. The applicant is proposing a private street system, individual septic systems, and a private water system and pump station.

The land is zoned and designated Residential Mixed Density and contains approximately 314 acres. The property is vacant and is not currently serviced. The Commission previously approved the creation of a 285-lot subdivision on the site (Subdivision File 2008-2). The applicant submitted a new proposal which includes the following improvements:

1. The project will include 133 lots, ranging in size from 0.81 acres to 12.98 acres. The average net lot size is approximately 2.1 acres. The hearing notice was for 132 lots. In subsequent conversations with the applicant, one minor modification was made adding one additional lot to this project. That information was distributed this evening. The project will be developed in eight phases over a 10-year period.

2. East Grant Street provides access to the subdivision, while the subdivision will be served by a private street system. The typical cross-section will be 32 feet with 22 feet of paving and 5-foot gravel shoulders; roadway slopes, including East Grant Street, will not exceed 10%.
3. The applicant anticipates the need for a left-turn refuge on Berlin Road to access East Grant.
4. The water system will be private with a single meter placed on East Grant Street. The meter feeds a pump station and subsequent reservoir system.
5. Sanitary service will be provided by in-ground septic systems conforming to Linn County standards.
6. The applicant indicates storm water will be designed to minimize storm water impacts and will likely incorporate the private street system to manage run-off.

The City received the following comments:

1. In general, City Engineering Services requested:
 - a. Improvements must comply with City standards and be reviewed and approved by the City Engineer prior to construction.
 - b. Provide a traffic report prepared by a Professional Traffic Engineer to evaluate conditions from Berlin Road.
 - c. The City Master Plan requires a pedestrian trail up Ridgeway Butte. This can be accomplished by having a separate trail system or utilization of a private roadway through easements.
 - d. The proposed private water system must be designed, approved and constructed in accordance with applicable State regulations.
 - e. Provide verification that the Linn County Sanitarian approved on-site septic system for each lot prior to platting.
 - f. The drainage system and grading plan cannot adversely impact adjacent properties and cannot exceed historical rates. An analysis as to impacts on Berlin Road is required.
2. The Lebanon Fire District noted a secondary emergency access road will not be required if an all-weather surfaced road is provided, street slopes do not exceed 10%, hydrants are installed, and each home has a sprinkler system.

Chapter 16.22 establishes the decision criteria for this request. Specific criteria are contained in the staff report and are summarized as follows:

1. The proposed single-family subdivision is permitted in the RM zone. The minimum lot size is 5,000 sq. ft. with a minimum lot width of 50 feet. Lots on steep slopes require additional area. Based on the site plan, staff concludes the proposal exceeds the minimum requirements of the zone and for steeply sloped lots. All lots front a street and meet minimum access requirements. A fire apparatus access drive is required to serve buildings located more than 150 feet from a roadway.

2. While this is a higher-density zone, the larger lots appear logical given the site's geology and topography, as well as the proposed use of in-ground septic systems. For this reason, staff recommends prohibiting further land divisions.
3. The subdivision will be served by a private street system, with a 22-foot paved improvement and 5-foot gravel shoulders. Section 16.13.030.N allows private streets provided they comply with applicable City Standards and Lebanon Fire District requirements. The City has not adopted private street standards, so the City Engineer suggested paving conform to the minimum local street standard of a 22-foot minimum paved improvement. This is acceptable to the Fire District.
4. In lieu of constructing a separate trail system to provide access, the City Engineer recommended tracts, easements and/or trails along the access improvements be constructed. In effect, the private street can be used to access the site. This also recognizes a trail system on slopes exceeding 30% are both difficult to construct and also expensive to maintain.
5. The subdivision access is off East Grant Street. Improvements on East Grant will likely require County approval of the street design.
6. A traffic impact analysis will be required, primarily to determine what improvements are required on Berlin Road. Of particular concern is the stacking of vehicles along Berlin Road and their impact on south-bound vehicles. This will likely include a left-turn lane at the East Grant entrance.
7. The applicant intends to construct a private water system (final acceptance to be determined). Based on a preliminary review by City staff, the system provides sufficient water supplies, at appropriate pressures, to meet both domestic and fire suppression needs. To service this system, the City would install the appropriate water meter at the entrance to the development; remaining improvements beyond the meter will be maintained by a homeowners association.
8. Sanitary sewer plans were not required as individual septic systems are planned for each lot. Evidence of the approval by Linn County must be submitted to the City before a plat can be recorded.
9. A specific drainage plan was not submitted, although evidence from the prior proposal indicates storm drainage can be accommodated. Plans will need to be reviewed by the City and detention areas may be required.
10. The applicant previously conducted a wetland analysis and the identified sites are located on the preliminary subdivision plat. Staff recommends the location and maintenance provisions be approved by the Department of State Lands before platting.
11. As a private street system, the block layout provisions in Chapter 16.12 or the design provisions in Chapter 16.13 do not directly apply to this request. For issues of safety and consistent with provisions in Section 16.12.030.P., the cul-de-sacs should be of sufficient size to allow turning for emergency vehicles. This can be reviewed by the Fire District prior to platting. Further, as long as the identified fire safety measures are taken, it appears a secondary emergency access road is not required.

12. Development on this site remains subject to provisions in the Steep Slope Development Overlay Zone. All cuts, grading and fills, as well as improvements on slopes exceeding 15%, are subject to approval by an engineering geologist. This will likely be required for the installation of facility improvements and the siting of certain residences.
13. The preliminary plat identifies a number of "tracts" that are used for common open space, facilities and the private street. Along with private facilities, the homeowners association must maintain these tracts.
14. Given the isolation of the development, additional screening or buffering would not appear necessary. However, the Urban-Wildland Interface Fire Protection requirements in Section 16.11.040.G apply to each residence. They establish an effective clear-zone of vegetation reducing the amount of fuel available for a wildfire. In addition, residential roofs within these areas must comply with specific building code standards.

This is a distinctive piece of land in the City, encompassing the only significant elevation in the community. This alone creates a unique set of challenges regarding access and facility improvements, not to mention issues associated with the underlying geology. Given these constraints, the proposed 133-lot single-family subdivision creates a balance between the unique topography and development opportunities in the zone. Approval of this application effectively makes void the prior approval for 285 lots.

Based on these factors, staff recommends the Commission approve the submitted subdivision, subject to the conditions noted in the Staff Report.

Commissioner Brown asked for clarification about the private water system. Wendolowski explained that at the time the Staff Report was written, there was question in staff's mind, as to whether it would only require legal counsel approval, whether it had to go before the City Council, or whether it could be done at all. He found out today that a private water system would be acceptable. So he concurs that if approved, the findings will need to be changed to reflect that.

Chairman Robertson asked what the water source will be. Wendolowski stated that City water will be extended to the site with a meter installed on East Grant. A private system, developed to a City standard, will run from the meter to the development. Whitlatch added that the homeowners association or the developer will be responsible for the water based on one master meter. They will determine how to charge the residents.

Vice-Chairman Salvage asked about the advantages of a private versus public system. Whitlatch stated that the staff concurs with the developer's proposal of a private system. It would still be built to City standard, but it would be less maintenance for the City. Wendolowski added that there are no plans to extend development further east, north or south from this site. Any UGB expansions would occur on the west side of the river.

Vice-Chairman Salvage recalled that the original Ridgeway Butte development included phases on the river. Wendolowski explained that there was a separate zone change application on the west side of Berlin Road. The concept plan for that area is now part of this development; everything will occur on the east side of Berlin Road.

Chairman Robertson asked what a rural roadway (East Grant Street) consists of. Wendolowski indicated that it is dedicated as a public road or public right-of-way, but it is not on the County maintenance schedule, nor is it managed in any way by the County. If the County does not want to review the plans for East Grant Street, the City is comfortable with assuming that control. He

confirmed for Chairman Robertson that it would be paved to two 11-foot lanes and the appropriate shoulders. The slope would be no more than 10%.

Vice-Chairman Salvage asked whether the trail system is conceptual. Wendolowski stated that staff gave the developer the option of coming up with a separate trails system that would provide access to the upper portions of the site or, in some manner, utilizing the private street system. The City's trail system in the City uses constructed paths, as well as sidewalks. The City's concern, with the separate trail system, would be the cost of developing and maintaining this, especially down the road since some slopes are extremely steep and not necessarily ADA accessible. Staff will work with them if they wish to do it, but we want to give them the option of using the private street system.

Chairman Robertson asked Wendolowski to further explain Condition C.1.h. on Page 3. Wendolowski explained that at the time this was written, staff was not certain whether this would be a public or private water system. If they had decided to have a public water system, the City would have need the easements and would have to ensure that it is done to mitigate the hazardous grades, etc. This recommendation may no longer be applicable, but it should be kept, in case there is a public easement of some sort that might need to be placed on the subdivision plat. Whitlatch added that this was left in, just in case the applicant opted to do some kind of a more public trail system, so there would be no grades or unsafe areas.

Chairman Robertson asked whether the condition of no further subdivision or reduction of the lot sizes would be a deed restriction that will go to each property. Wendolowski stated that staff can recommend that this be placed in the homeowners association. Regardless, they would have to come through the City for any land divisions. Because of the topography, geology, the private street system and private utilities, 133 lots seems a reasonable balance on the site. He confirmed for Chairman Robertson that this includes minor land partitions and any land division.

Chairman Robertson opened the public testimony portion of the Hearing and invited the applicant or the applicant's representative to come forward.

Keith Wisenhut, Project Delivery Group Land Surveyor and Engineer, the applicant's representative, stated that the City staff, the applicant, the design team, which includes 4B Engineering on the water system, as well as Project Delivery Group staff have worked together over the last few weeks to answer many questions and resolve a lot of issues. They feel that this is a win-win proposition for everyone involved. They appreciate staff's efforts to make themselves available and to address any issues.

Hearing no comments in favor of or in opposition to the application, Chairman Robertson closed the Public Hearing. He announced that all further discussion will be between the Commission and staff.

Chairman Robertson asked Whitlatch what the City requires, as far as the geology study, because it makes him nervous that it is not known whether all of the lots are buildable. Whitlatch stated that it is a requirement that they provide the City with proof that the lots are buildable. Chairman Robertson asked whether this applies on an individual basis. Wendolowski stated that, based on the Staff Report, geological engineering would be required for any infrastructure improvements on steep slopes. Much of the assumed building sites are fairly level and may not require any sort of engineering analysis. However, the building official has the authority to request a geological or geotechnical engineer analysis, if there is any question in his mind that the soils cannot accept a foundation or other improvements.

Chairman Robertson asked what would happen if a lot is deemed unsafe. Wendolowski stated that an option would be to go through a property line adjustment to merge it with an adjacent property.

Or the homeowners association could use it as open space. He confirmed for Chairman Robertson that they would own in collectively, unless the developer wants to hold onto it.

Kennedy pointed out that the Commission's approval does not say that the lots are buildable. The approval states that the lots can be built upon, if it is proved that they are buildable.

Vice-Chairman Salvage moved, Commissioner Rebmann seconded, that the Planning Commission adopt the Proposed Findings and Conditions contained in the Staff Report and approve the applicant's request in Planning Case 13-04-15, as submitted.

The Commissioners felt that all criteria are met and saw no serious issues with this project.

The motion passed unanimously.

6. OTHER BUSINESS:

A. Next Meeting Date.

The next Planning Commission meeting will be held on June 19, 2013 to review an annexation and zone change at the former Weyerhaeuser/Willamette Industries site. There is no development proposal, but notice was sent to DLCD.

B. Meeting Time.

At Kennedy's request, the meeting time was changed to 6:00 pm.

C. ODVA.

ODVA permits were reviewed and approved.

7. COMMISSIONER COMMENTS:

Responding to Chairman Robertson's question, Wendolowski reported that the annexation approved last month was unanimously approved by the Council.

Responding to Vice-Chairman Salvage's question, Wendolowski stated that changes to the hotel were made to reflect market conditions.

Chairman Robertson reported that the newspaper spoke about a restaurant. He asked whether this would be part of the hotel. Wendolowski stated that he believes that it will be one of the buildings on the west side will contain a restaurant.

8. ADJOURNMENT:

There being no further business, the meeting was adjourned at 7:26 pm.

[Meeting recorded by Tammy Dickey and transcribed by Donna Trippett]



Senior Center
80 Tangent Street
Lebanon OR 97355
(541) 258-4919 ~ fax (541) 258-4956
www.ci.lebanon.or.us

ADVISORY BOARD MEETING

February 20th, 2013

MINUTES

Members Present: Bob Elliott, Lori McNulty, Alice Unger, Angie Kutsch, Mac McNulty, Darlene Johnson, Mary Sue Reynolds, Cleora Wymore, Fran Bonnarens, Kindra Oliver

Absent: Laura Wallace, Tori Hartman

1) WELCOME:

Alice opened the meeting at 10:00 a.m.

2) MINUTES:

Mary Sue moved, Fran seconded to approve the minutes from October 17th, 2012, Advisory Board meeting. All in favor. Motion passed unanimously.

3) CHAIRPERSON'S REPORT:

Tax season is upon us! Tax appointments are filling up through March, in Lebanon and Sweet Home. Karen is taking appointments for both locations.

4) REPORTS:

Meal Site:

- Tori has a few new volunteers and things are running smoothly for Meals-on-Wheels and the meal site.
- The numbers in the dining room are rising, as they usually do when we are moving into spring.

Senior Center:

- We've updated quite a few things, including: the new brochure rack in the front lobby/hallway, new fireplace in the Library, new pictures in the small meeting room and a new City aerial photo for the Heritage Room. We are working with the sign company to get things finalized for the interior signage. We are still looking for quilt racks for the Heritage Room also.

- We have done some cleaning and organizing over the last couple of months also. We recently sent two old organs (one didn't work) and our oldest piano to surplus and reorganized the stage area so it is easier for us, our exercise groups and the church to use and access equipment stored on the stage.
- The Dial-a-Bus numbers are up 3-4% in the first two quarters, over a significant increase of 28-29% last fiscal year.
- Kindra will be submitting grant applications for the Dial-a-Bus for our 5311 and STF programs in the next 1-2 months. It appears we'll have approximately the same amount to apply for as in the previous 3-4 years.
- The March newsletter includes a reminder that we have a "fix-it brigade" available to seniors in our community. We have two eager volunteers that can do minor repairs, install grab bars, etc. We cannot do any plumbing or electrical work of any kind. We want the community to know that this service is available. It was suggested that we let our readers know that they are available to do simple tasks, such as change light bulbs, check smoke detectors, make sure their residence has a visible house number, etc.
- Kindra will send out an email notice with Senior Center functions, etc. to keep everyone informed of what is happening at the Senior Center.
- The Valentine's Day Chocolate Party was a big hit again this year, as was the Sweetheart Dinner and Movie Day.

CONTINUING BUSINESS:

- Kindra has worked through updating many of the policies and procedures for the Senior Center and Dial-a-Bus, such as the computer policy, code of conduct, facility usage, SC/DAB staff duties, ADA, drug and alcohol updates and others.
- Kindra hopes to have binders semi-complete in order to distribute at the next meeting with the proposed revised or policies/procedures to date. The binders can be updated when the policies/procedures are finalized.
- We returned the chairs that were originally purchased for the lobby/waiting area, as the design and look didn't fit our need. It was agreed that the chairs need to be the appropriate height and size and they have to have arms.

ITEMS FROM THE FLOOR:

- Lori asked if a letter to the board would suffice, if someone were resigning from the board.
- Mary Sue mentioned that the fee structure for some classes will likely be changing come fall term.

ADJOURNMENT:

- *Lori moved, Cleora seconded, to adjourn the meeting. Meeting adjourned.*

Next Meeting: **June 19th, 2013**

Proclamation(s)



“National Night Out” – August 6, 2013” PROCLAMATION

WHEREAS, the National Association of Town Watch (NATW) and TARGET is sponsoring a unique, nationwide crime, drug and violence prevention program on August 6, 2013, entitled “National Night Out; and

WHEREAS, the “30th Annual National Night Out” provides a unique opportunity for Lebanon, Oregon to join forces with other communities across the country in promoting cooperative, police/community crime prevention efforts; and

WHEREAS, the City of Lebanon plays a vital role in assisting the Lebanon Police Department through local joint crime prevention efforts and by supporting “National Night Out 2013” in Lebanon; and

WHEREAS, it is essential that all citizens of Lebanon be aware of the importance of crime prevention programs and the impact that their participation can have on reducing such crimes; and

WHEREAS, police/community partnerships, neighborhood safety, awareness and cooperation are important themes of the “National Night Out” program;

NOW, THEREFORE I, Paul R. Aziz, Mayor of the City of Lebanon, do hereby proclaim Tuesday, August 6, 2013 as **“NATIONAL NIGHT OUT”** in our city and call upon all citizens of Lebanon to join the Lebanon Police Department, the National Association of Town Watch, and TARGET in supporting the 30th Annual National Night Out.

Paul R. Aziz, Mayor
City of Lebanon, Oregon

In Witness Whereof, I Hereunto Cause the Great Seal of the
City of Lebanon to be affixed on this 10th day of July, 2013.

Linda Kaser, City Clerk

Agenda Item 1



MEMORANDUM

Planning Division

To: Paul Aziz, Mayor
Jon Nelson, Interim City Manager

Date: July 3, 2013

From: Walter Wendolowski, AICP
Community Development Manager

Subject: Annexation; Plan and Zone Map Amendments

Applicant: Weyerhaeuser Real Estate

Map & Tax Lot No.: 12-2W-11; 1000

Planning File: 13-05-16

Address: 800 E. Milton Street

The applicant is requesting approval of the following: (1) Annexation of the property into the City limits; and, (2) a change in the Comprehensive Plan Map designation from Industrial (C-IND) to Mixed Use (C-MU) with a corresponding establishment of the Mixed Use zone (Z-MU). *There is no corresponding development plan at this time.*

The subject land is currently designated Industrial on the City of Lebanon Comprehensive Plan Map, and as required by the Lebanon Development Code, would normally be assigned the Industrial (Z-IND) zone upon annexation. However, owing to the unique location of the site, existing aesthetic and natural resources, as well as surrounding residential development, the Comprehensive Plan (Chapters 2 and 4) strongly support the establishment of the Mixed Use zone on the property. In effect, the Plan and zone map amendment conform to Comprehensive Plan's expectations of the site.

The Planning Commission conducted a public hearing regarding this request on June 19, 2013, finding the application complies with the decision criteria contained in the Lebanon Development Code and voted unanimously to recommend the City Council approve the request. Findings contained in the Planning Commission Order of Recommendation are incorporated as Exhibit "B" in the attached adoption Ordinance. If approved, the Council will adopt a bill for an ordinance annexing the property and establishing the proposed Plan designation and zone. Staff will review the material with greater detail at the public hearing.

It is the recommendation of the Planning Commission that the City Council approves the annexation of the property, and approves the proposed map amendments to establish the Mixed Use zone on the newly annexed property.

A BILL FOR AN ORDINANCE ANNEXING AND) ORDINANCE BILL NO. 2013-3
ZONING PROPERTY FOLLOWING CONSENT)
FILED WITH THE CITY COUNCIL BY)
LANDOWNERS IN SAID AREA PURSUANT TO) ORDINANCE NO. 2844
ORS 222.120 AND ORS 222.170)
File 12-09-46; AND AMENDMENDING THE)
COMPREHENSIVE PLAN MAP AND ZONING)
MAP; WEYERHAEUSER REAL)
ESTATE DEVELOPMENT COMPANY)

WHEREAS, the City of Lebanon received a submission by written request for annexation of real property to the City of Lebanon, herein described in Exhibit “A”; and,

WHEREAS, the annexation submission included a concurrent request to change the Comprehensive Plan designation to Mixed Use (C-MU) and establish the Mixed Use (Z-MU) zone on the property; and,

WHEREAS, on June 19, 2013, the Planning Commission for the City of Lebanon conducted a hearing on Planning File No. 13-05-16, making findings recommending annexation of the subject property and establishment of the Mixed Use Comprehensive Plan designation and the Mixed Use zone; and,

WHEREAS, after conducting the hearing and considering all objections or remonstrance with reference to the proposed annexation, and further considering the recommendation of the Lebanon Planning Commission, the City Council finds that this annexation, and concurrent amendments to the Comprehensive Plan map and Zoning map, is in the best interest of the City and of the contiguous territory.

NOW, THEREFORE, the City of Lebanon ordains as follows:

Section 1. Findings. In addition to the findings referred to above, the City Council further adopts and finds those matters contained in Exhibit “B” which is incorporated herein by this reference as if fully set forth at this point.

Section 2. Annexation Area. Based upon the findings contained above and in Exhibit “B”, the contiguous territory described in Exhibit “A” and incorporated herein by this reference as if fully set forth at this point is hereby proclaimed to be annexed to the City of Lebanon.

Section 3. Comprehensive Plan Map and Zone Map Amendments. Based upon the findings contained above and in Exhibit "B", the contiguous territory described in Exhibit "A" and incorporated herein is hereby designated Mixed Use (C-MU) on the City of Lebanon Comprehensive Plan Map and zoned Mixed Use (Z-MU) on the City of Lebanon Zoning Map.

Section 4. Record. The City Recorder shall submit to the Oregon Secretary of State a copy of this Ordinance. The City Recorder is further ordered to send a description by metes and bounds, or legal subdivision, and a map depicting the new boundaries of the City of Lebanon within ten (10) days of the effective date of this annexation ordinance to the Linn County Assessor, Linn County Clerk and the Oregon State Department of Revenue.

Passed by the Lebanon City Council by a vote of _____ for and _____ against and approved by the Mayor this 10th day of June, 2013.

Paul R. Aziz, Mayor
Bob Elliott, Council President

Attested:

Linda Kaser, City Clerk

EXHIBIT A

When recorded, return to:
Weyerhaeuser NR Company
Land Title CH1-F23
P.O. Box 9777
Federal Way, WA 98063-9777

Send Tax Statements to:
Weyerhaeuser NR Company
Tax Department
P.O. Box 9777
Federal Way, WA 98063-9777

Map / Tax Lot No. 12S02W11-01000

Account No. 182614

BARGAIN AND SALE DEED

The Grantor, **WEYERHAEUSER NR COMPANY**, a Washington corporation, for valuable consideration, receipt of which is hereby acknowledged, does hereby grant, bargain, sell and convey to **WEYERHAEUSER REAL ESTATE DEVELOPMENT COMPANY**, a Washington corporation, Grantee, the real property situated in **Linn County, Oregon**, described on **EXHIBIT A** attached hereto and by this reference made a part hereof.

The true consideration for this conveyance stated in terms of dollars is none.

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

Page 1 of 7

Weyerhaeuser NR/Weyerhaeuser Real Estate Development
T2013-210ps

EXHIBIT B

LEBANON CITY COUNCIL FINDINGS

I. NATURE OF THE APPLICATION

This matter comes before the Lebanon City Council on the application of the Weyerhaeuser Real Estate Development Company to annex property and amend the Comprehensive Plan and Zone Maps to establish the Mixed Use (Z-MU) zone on the newly annexed property.

II. BACKGROUND INFORMATION

A. Site Location

The subject property is located at the east end of Milton Street, to the south of the railroad right-of-way and Grant Street. The property address is 800 East Milton Street and the Linn County Assessor map locates the parcel within Township 12 South; Range 2 West; Section 11; Tax Lot 1000.

B. Site Development and Zoning

The 150.55 acre property contains a former Willamette Industries mill site. The vacant site contains a rail stub while public facilities can be extended to the property. The land is located within the Urban Growth Boundary, designated Industrial (Z-IND) in the Lebanon Comprehensive Plan and zoned Urban Growth Management by Linn County.

C. Adjacent Zoning and Land Uses

The South Santiam River borders the property along the east. To the north is Industrial zoned land containing a mixture of commercial uses, as well as Gill's Landing RV Park. Property to the west is zoned Residential Limited Density, while land to the south is zoned Residential Mixed Density. The dominant land use is single family homes located on subdivision-sized lots.

D. Proposal

The applicant is requesting approval of the following: (1) Annexation of the property into the City limits; and, (2) a change in the Comprehensive Plan Map designation from Industrial (C-IND) to Mixed Use (C-MU) with a corresponding establishment of the Mixed Use zone (Z-MU).

III. PUBLIC HEARING

A. Planning Commission Action

On June 19, 2013, the Lebanon Planning Commission held a public hearing on this application. At the hearing, Planning File 13-05-16 was made a part of the record. The City noticed the hearing pursuant to Chapter 16.20 of the Lebanon Development Code. Commissioner Cornell noted he was part of discussions regarding property access from Grant Street; however, the communication did not discuss the current application. Commission Chair Robertson noted he represented the property at one time but has no current interest in the site's development. Otherwise, no ex parte contacts were declared and no objection was raised as to jurisdiction, evidence or testimony presented at the hearing. At the conclusion of the hearing, the Planning Commission deliberated on the issue and voted to recommend the City Council approve the proposed Annexation and map amendments. The Commission found the proposed changes consistent with the applicable decision criteria.

B. City Council Action

On July 10, 2013, the Lebanon City Council held a public hearing on this application. At the hearing, Planning File 13-05-16 was made a part of the record. The City noticed the hearing pursuant to Chapter 16.20 of the Lebanon Development Code. No ex parte contacts were declared and no objection was raised as to jurisdiction, evidence or testimony presented at the hearing. At the conclusion of the hearing, the City Council deliberated on the issue and voted to approve the proposed Annexation and map amendments. The Council found the proposed changes consistent with the applicable decision criteria.

IV. FINDINGS OF FACT-GENERAL

The Lebanon City Council, after careful consideration of the testimony and evidence in the record, adopts the following General Findings of Fact:

- A. The applicant is the Weyerhaeuser Real Estate Development Company.
- B. The subject property is located at the east end of Milton Street, to the south of the railroad right-of-way and Grant Street. The property address is 800 East Milton Street and the Linn County Assessor map locates the parcel within Township 12 South; Range 2 West; Section 11; Tax Lot 1000.
- C. The property contains 150.55 acres.
- D. The property contains a former Willamette Industries mill site. The vacant site contains a rail stub while public facilities can be extended to the property.
- E. The subject area is located within the City's Urban Growth Boundary, designated Industrial (C-IND) in the Lebanon Comprehensive Plan and zoned Urban Growth Management by Linn County.
- F. The South Santiam River borders the property along the east. To the north is Industrial zoned land containing a mixture of commercial uses, as well as Gill's Landing RV Park. Property to the west is zoned Residential Limited Density, while land to the south is zoned Residential Mixed Density. The dominant land use is single family homes located on subdivision-sized lots.
- G. The applicant is requesting approval of the following: (1) Annexation of the property into the City limits; and, (2) a change in the Comprehensive Plan Map designation from Industrial (C-IND) to Mixed Use (C-MU) with a corresponding establishment of the Mixed Use zone (Z-MU).
- H. The decision to approve or deny shall be based on criteria contained in the Lebanon Development Code, Chapter 16.26 – Annexations, and, Lebanon Development Code Chapter 16.27 – Plan and Zone Map Amendments.

V. APPLICATION SUMMARY

- A. The request would annex the private property into the City limits. Based on provisions in the Development Code, the Industrial zone (Z-IND) would automatically be assigned to the Industrial (C-IND) designated property. However, in addition to the annexation, the applicant wishes to change both the Comprehensive Plan Map designation and Zoning to Mixed Use. For the record, this request is limited solely to the proposed Annexation, Plan map amendment and Zone map amendment and does not include a development application.
- B. The Community Development Department requested comments from affected agencies and area property owners. The Department received the following comments:
 - 1. City Engineering Service – The following comments were submitted:
 - a. E. Elmore Street: The Street is located at the northwesterly corner of the site. The street is substandard in width and condition. Available facility improvements include an 8" sanitary sewer line and 8" water line.
 - b. Harmony Street: The Street is located along the northwesterly side of the site and contains 8" sanitary sewer line and 8" water line.
 - c. Milton Street: The Street is located along the west side of the site 8" shallow, sanitary sewer line and 6" water line. .
 - d. Mayfly Street: This Street is located along the southerly side of the site and contains an 8" sanitary sewer line and 8" water line.

None of the above noted streets includes storm water facilities.
 - 2. Oregon Department of Land Conservation and Development (DLCD) - The DLCD noted the City must demonstrate the proposed amendment is consistent with its most recent economic opportunities analysis as well as applicable provisions in the local comprehensive plan. Otherwise, the DLCD did not oppose the change, and in discussions with the agency's Field Representative, the logic of the zone change is apparent.
 - 3. Oregon Department of Transportation (ODOT) – ODOT requested findings to address the Transportation Planning Rule (OAR 660-012-0060) indicating the map amendments will not significantly affect the transportation system.

- D. The application includes both an Annexation, and, a change in the Comprehensive Plan designation and corresponding Zoning. Both are quasi-judicial decisions subject to a recommendation by the Planning Commission with a final decision by the City Council.

VI. CRITERIA AND FINDINGS - ANNEXATION

- A. The subject area is located within the City's Urban Growth Boundary (UGB) and is eligible for annexation into the City limits. Annexation application and review requirements are contained in Chapter 16.26 of the Lebanon Development Code. Annexations require a hearing before the Planning Commission and City Council.
- B. Chapter 16.26 establishes the Annexation review criteria. Sections 16.26.010 and 16.26.020 establish the purpose of an annexation and the first assignment of zoning. The annexation transfers jurisdiction from Linn County to the City and establishes the appropriate zoning on the property consistent with the Plan Map designation. Section 16.26.030 notes an annexation is necessary to establish the appropriate zone, consistent with the zoning matrix (Table 16.26-1). Plan map amendments are only required if there is a corresponding change in the Plan map. Further, proposed amendments to the Plan map (and corresponding zone map) must conform to provisions in Chapter 16.27. For the record, the application includes a request to change the Plan and zone maps.
- C. Section 16.26.040 identifies the relationship between annexation and City facility plans. It notes anticipated densities and levels of development are factored into the City's facility plans, including the Transportation System Plan. Therefore, additional inquiry into the sufficiency of these services is not required.
- D. Section 16.26.050 stipulates all annexations be processed as legislative actions requiring hearings before both the Planning and City Council. This Section also lists application requirements. For the record, the application and process are consistent with the provisions in this Section.
- E. Section 16.26.060 contains the decision criteria for an annexation with specific requirements in Section 16.26.060.A. This Section requires compliance with provisions in the City Annexation Ordinance and Lebanon Comprehensive Plan, Chapter 3 – Urbanization. Essentially, the Annexation Ordinance and Comprehensive Plan decision criteria are the same. To avoid duplication, and where applicable, the findings are combined:
 - 1. Annexation Ordinance Section 1. – This Section identifies the document as the Annexation Ordinance for the City of Lebanon and does not contain decision criteria.
 - 2. Annexation Ordinance Section 2. - All Annexations shall conform to the requirements of the Lebanon Municipal Code, Annexation Ordinance, Lebanon Land Development Ordinance (i.e., Development Code), City of Lebanon/Linn County Urban Growth Management Agreement, and shall be consistent with applicable State law.

Comprehensive Plan Annexation Policy #P-19: [The City shall] recognize and act on the basis that all annexations shall conform to the requirements of the Lebanon Municipal Code, Annexation Ordinance, Lebanon Land Development Ordinance, City of Lebanon/Linn County Urban Growth Management Agreement (UGMA), and shall be consistent with applicable State law.

FINDINGS: For the purpose of this criterion, the annexation application and process conform to the requirements of the Annexation Ordinance.
 - 3. Annexation Ordinance Section 3. - All Annexations shall be consistent with the goals and policies of the Lebanon Comprehensive Plan.

Comprehensive Plan Annexation Policy #P-20: [The City shall] recognize and act on the basis that all annexations shall be consistent with the goals and policies of the Lebanon Comprehensive Plan.

FINDINGS: The Annexation Ordinance policies are consistent with, and often mirror, the Comprehensive Plan Annexation Policies. The State acknowledges that the City's Comprehensive Plan complies with all applicable Statewide Planning Goals and statutes, recognizing the consistency of the Plan goals and policies. Therefore, compliance with the applicable Comprehensive Plan policies ensures compliance with the Annexation Ordinance. Findings in the following Sections detail this proposal's compliance with all applicable policies.
 - 4. Annexation Ordinance Section 4. - All lands included within the Urban Growth Boundary are eligible for annexation and urban development. Areas within the Urban Growth Boundary with

designated environmental constraints may be annexed and utilized as functional wetlands, parks, open space and related uses.

Comprehensive Plan Annexation Policy #P-21: [The City shall] recognize and act on the basis that all lands included within the Urban Growth Boundary are eligible for annexation and urban development. (Areas within the Urban Growth Boundary with designated environmental constraints may be annexed and utilized as functional wetlands, parks, open space and related uses.)

FINDINGS: The proposed annexation complies as the subject area is within the City's UGB. Further, being within the UGB, the City identified the subject property as land needed by the City for future urban development.

5. Annexation Ordinance Section 5. - The City shall only annex land that is contiguous to the existing City limits and is within the City's Urban Growth Boundary.

Comprehensive Plan Annexation Policy #P-22: [The City shall] only annex land that is contiguous to the existing City limits and is within the City's Urban Growth Boundary (UGB).

FINDINGS: City limits effectively surround the property; therefore, the area is eligible for annexation.

6. Annexation Ordinance Section 6. - An annexation shall be deemed orderly if the annexation territory is contiguous to the existing City limits. An annexation is efficient if the annexation territory can be developed or redeveloped to an urban use. Urban uses may include functional wetlands, parks, open space and related uses.

Comprehensive Plan Annexation Policy #P-23: [The City shall] deem an annexation orderly if the annexation territory is contiguous to the existing City Limits, and deem an annexation efficient if the annexation territory can be developed or redeveloped to an urban use (urban uses may include functional wetlands, parks, open space and related uses).

FINDINGS: The proposed annexation complies with the above noted criteria as follows:

- (a) Since the area is contiguous to existing City limits, the annexation is considered orderly.
- (b) The parcel size (150.55 acres) provides a significant number of development options.
- (c) Based on preliminary information it appears the approximate southern half of the site may contain wetlands. Their existence does not prohibit or otherwise restrict the development of the remainder of the site.

7. Annexation Ordinance Section 7. - Development proposals are not required for annexation requests.

Comprehensive Plan Annexation Policy #P-24: [The City shall] recognize and act on the basis that development proposals are not required for annexation requests.

FINDINGS: This application does not include a concurrent development or redevelopment proposal.

8. Annexation Ordinance Section 8. - As part of the annexation process of developed property or properties, the City shall consider the anticipated demands to access key City-provided urban utility services, which are water, storm drainage, sanitary sewerage, and streets, of existing development within the annexation territory.

Comprehensive Plan Annexation Policy #P-25: [The City shall] consider as part of the annexation process of developed property or properties, the anticipated demands to access key City-provided urban utility services, which are water, storm drainage, sanitary sewerage, and streets, of existing development within the annexation territory.

FINDINGS: Per Engineering Services, City services are available to the west of the site and can be extended to serve the property.

9. Annexation Ordinance Section 9. - As part of the annexation process of developed property or properties, the City shall consider the impacts on key City-provided urban utility services needed to serve these properties, which are water, storm drainage, sanitary sewerage, and streets.

Comprehensive Plan Annexation Policy # P-26: [The City shall] Consider as part of the annexation process of developed property or properties, the impacts on the capacities of key City-provided urban utility services needed to satisfy the anticipated demands of the properties discussed in P-25 above.

10. Annexation Ordinance Section 10. - Needed Public rights-of-way, as identified in adopted transportation plans as necessary for the safe and efficient movement of traffic, bicycles and pedestrians, shall be dedicated to the City either with annexation or when the property develops and/or redevelops and thus creates an increased demand for the benefits and utility provided by additional rights-of-way dedication.

FINDINGS: Additional right-of-way dedication and street improvements are unnecessary as part of the annexation.

11. Annexation Ordinance Section 11. - Upon annexation, the annexation territory shall be assigned zoning classifications in accordance with the adopted Comprehensive Plan Map, as shown in the City's Annexation Zoning Matrix. Such zoning assignments in and of themselves are not a zoning map change and shall not require approval of a zoning map amendment, or a separate proceeding.

FINDINGS: This City Comprehensive Plan designates the subject property as "Industrial". While the Industrial (Z-IND) zone is the only corresponding zone, the applicant is requesting a concurrent change to the Plan designation and zone which is reviewed in Section VII of this Exhibit.

12. Annexation Ordinance Section 12. - If a zoning designation other than one in accordance with the Comprehensive Plan Map (shown in the Annexation Zoning Matrix) is requested by an applicant, the zoning requested shall not be granted until the Comprehensive Plan Map is appropriately amended to reflect concurrence. Such an amendment shall require a separate application, hearing and decision, which may be held concurrently with an annexation hearing and will not become effective until the annexation is complete.

FINDINGS: This application includes an annexation as well as a proposed change to the Plan designation and corresponding zone. As noted, the map amendments are reviewed in Section VII of this Exhibit.

13. Annexation Ordinance Section 13. - The areas within the Urban Growth Boundary with designated environmental constraints may be annexed and developed as functional wetlands, parks, open space and related uses.

FINDINGS: While the site contains wetlands, these are concentrated on the southern half of the property (approximately) and do not preclude development on the remainder of the site.

14. Annexation Ordinance Section 14. - An "urban use" is hereby defined as any land use that is authorized under the terms and provisions of the land use regulations, Zoning Ordinance (i.e., Development Code), Subdivision Ordinance, Comprehensive Plan, and other related documents of the City of Lebanon.

FINDINGS: This Section does not apply as the provisions in this Section provide a definition and not a decision criterion.

15. Annexation Ordinance Section 15. - At the applicant's discretion and with the City's concurrence, a development or redevelopment proposal for an annexation territory may be acted upon by the Planning Commission immediately following the Commission's hearing on the annexation proposal and a decision of recommendation of approval to the City Council. However, any approval of the Planning Commission of such a development or redevelopment proposal must be contingent upon subsequent approval of the annexation by City Council.

FINDINGS: The application does not include a development or redevelopment proposal specific to the property.

16. Comprehensive Plan Annexation Policy # P-27: Expand the City Limits as necessary to accommodate development, including housing, commercial, industrial, and services (that will in turn accommodate population growth).

FINDINGS: This Policy does not directly apply as the proposal incorporates a former industrial site into the City limits.

- G. Section 16.26.060.B allows the City to require the abatement of non-conforming uses and/or structures prior to hearing an annexation request. Other provisions of this Code and the Lebanon Municipal Code may require abatement of certain kinds of situations before an annexation request can be approved. This Section does not apply as the site is effectively vacant.
- H. Section 16.26.060.C, allows the City to identify additional site-specific evaluation criteria based on the Lebanon Comprehensive Plan, the provisions of this Code, and the Lebanon Municipal Code. Site-specific criteria could include, but not be limited to, the following: steep slopes, natural hazards, riparian zones, wetlands water bodies, overlay zones, infrastructure development, existing conditions and failing on-site services. Such site-specific criteria do not affect the eligibility of properties for annexation, but serve as an advisory to applicants of factors that may affect future development. There are no site-specific, evaluation criteria that apply to the subject area.
- I. Upon annexation, Section 16.26.020 requires the subject property to be placed in the appropriate zone. Upon annexation, the territory will automatically be assigned a City zone in accordance with the adopted Comprehensive Plan Map, and Annexation Zoning Matrix (Development Code Table 16.26-1). The only decision criterion in this process is that the Zone Classification shall be consistent with the adopted Comprehensive Plan Map (Section 16.26.020.D).

FINDINGS: The subject property is designated Industrial (C-IND) by the City's Comprehensive Plan. While the Industrial (Z-IND) zone is the only applicable zone which applies to this designation, the applicant submitted a request to change the Plan and zone maps to Mixed Use. This is reviewed in Section VII.

VII. CRITERIA AND FINDINGS – COMPREHENSIVE PLAN AND ZONE MAP AMENDMENT

- A. This request involves both a Comprehensive Plan Map Amendment and a Zone Map Amendment. The decision criteria in Chapter 16.27 do not distinguish between the two types of applications. Therefore, since the proposed Mixed Use zone will be consistent with the proposed Mixed Use Plan designation, findings in this report apply to both requests.
- B. Chapter 16.27 contains requirements for map amendments, including both the Comprehensive Plan map and Zoning map. Section 16.27.010 addresses the Chapter's purpose while Section 16.27.020 establishes the authority to request map amendments. The Plan and Zoning maps may be amended over time and an individual has the authority to request change in a property's Plan and Zoning map. This proposal conforms to these two Sections. Consistent with provisions in Section 16.27.030, the City Clerk maintains the official Plan and Zoning maps, as well as subsequent amendments.
- C. The Planning Commission cannot consider a Plan or Zone map amendment within the one-year period immediately following a previous denial (section 16.27.040). For the record, this is the first Plan and Zone map application regarding this property.
- D. Section 16.27.050 establishes the decision criteria for reviewing a Plan map or Zone map amendment. This material is covered under provisions in Section 16.27.080 and reviewed later in this report.
- E. Section 16.27.060 describes the application process and submittal requirements. Subsection "A." states the request requires hearings before the Planning Commission and City Council. The Commission provides a recommendation to the Council and the Council makes the final decision. Subsection "B." establishes the application requirements. For the record, this application and process conform to provisions in Section 16.27.060.A. Further, the applicant submitted the required information pursuant to provisions in Section 16.27.060.B.
(Note: Chapter 16.27 does not include a Section 16.27.070.)
- F. Section 16.28.080 establishes the decision criteria for Plan map and Zone map amendments. This Section states the City may approve a Comprehensive Plan Map or Zoning Map Amendment request if it satisfies all of the relevant Decision Criteria cited above in Section 16.27.050. Subsection "A." contains the relevant criteria, which are reviewed in the following Sections.
- G. Section 16.27.080.A.1 - All proposed amendments to the Comprehensive Plan Map or to the Zoning Map shall be consistent with the City of Lebanon's adopted Comprehensive Plan and Facility Plans. The City's Facility plans, including the 2007 Transportation System Plan (TSP), are based on the future site service demands according to the Comprehensive Plan Map designation and associated zoning. The proposal

was reviewed against the City's Comprehensive Plan. The Plan consists of ten Chapters with each Chapter addressing specific land use issues such as housing or natural resources. The *applicable* policies in each Chapter are reviewed below:

1. Chapter 1: Introduction - This introductory Chapter describes the Comprehensive Plan, its relationship to the Statewide Land Use Goals, the Citizen Involvement program and key terminology. Goals and policies relate to the organization of the Plan, the continued need for citizen involvement and the relationship of the Plan to State law and implementing codes. In general, these goals and policies are maintained through the Development Code criteria for determining the appropriateness of a Plan and/or zone change and the public hearing process that encourage public participation.
2. Chapter 2: Natural Environment – The Chapter address goals and policies related to the City's natural environment.

FINDINGS: This Chapter applies as the subject property is located within a Special Area identified in Chapter 2 of the Comprehensive Plan. The applicable Section 3.2 or Chapter 2 states the following:

3.2 Santiam Special Planning Area

The Santiam Special Planning Area is an overlay zone that straddles the South Santiam River southeast of Lebanon's Downtown District. The area on the west side of the Santiam River is the former Willamette Industries Plywood Mill site that stretches from Grant Street on the north to Riverview School on the south, and west from the Harmony Street/Post Street neighborhoods to the Santiam River. On the east side of the River, this Planning Area includes the territory along the River west of Berlin Road at the foot of Ridgeway Butte from Grant Street/Brewster Road in the north to the City Limits and UGB Boundary on the South.

This area is of special importance to Lebanon because of its central location and its unique natural features and their juxtaposition with one another. The area is a focal point for many community interests and goals including those related to transportation, recreation, riparian zone protection, habitat management (threatened and endangered species), water quality, scenic views, and commercial and residential development that is not detrimental to these other concerns. Identification as a Special Planning Area will help assure that the City is able to successfully integrate these key values during the development review process for this area. Approval of development proposals in this Special Planning Area will require demonstration that plans are able to successfully coordinate with the City's special studies that pertain to this area relating to such things as transportation, recreation, riparian protection, and habitat management.

It has been determined that a future Comprehensive Plan Map designation of Mixed Use will enable the creation of development and redevelopment strategies that can maximize the potentials of the multitude of amenities associated with the natural features of this area and simultaneously protect them. While the former Willamette Industries Plywood Mill site has historically been designated as General Industrial on the Comprehensive Plan Map, the City has now identified Mixed Use Development that includes recreational and commercial components as appropriate future Comprehensive Plan Map redesignation for this important redevelopment area. This future redesignation will enable the realization of the highest and best benefits for the community that this site has to offer. This future redesignation would lead to "up-zoning" upon annexation.

This Chapter recognizes the unique quality of the area and recommends that establishing the Mixed Use zone upon annexation is wholly appropriate and necessary to maintain the benefits of the site.

3. Chapter 3: Urbanization – This Chapter provides the basic framework for future urban development within the City. The Council finds the following policies apply:

Public Facilities Capability Policies

- P-3: Support a flexible phased program for the orderly extension of water, wastewater, storm drainage and transportation services in response to land development proposals.
- P-4: Maintain directives and technical standards for the extension of services as identified in the various original or updated infrastructure master plans and studies, such as the Wastewater Facility Study Master Plan, the Water Facility Study, Storm Drainage Master Plan, and the Transportation System Plan (TSP).

- P-5: Maintain and routinely update Capital Improvements plans. Often the plans are revised, updated, and implemented according to a five year plan beginning with the current budget year. The regularly updated plans may include Transportation, Water, Wastewater, Storm Drainage, and Facilities & Parks projects.
- P-10: Review all development proposals to ensure that public facilities are available and have adequate capacity to accommodate the proposed development, or that such facilities and their capacities can be made available through appropriate extensions and/or enhancements concurrent with or prior to proposed developments.
- P-11: Require that new developments are either served by existing and/or proposed public infrastructure improvements, and/or are served by privately funded infrastructure extensions and improvements.

FINDINGS: Based on information supplied by Engineering Services, services can be extended to the site. The site development will dictate the actual type and level of improvements; however, this will not alter the City's ability to provide necessary public services. Therefore, the proposal is consistent with the noted policies.

Additional Considerations for Conversion of Urbanizable Land to Urban Uses

- P-30: Manage its Urban Growth Boundary and the lands within so as to make available sufficient land for the various uses to ensure choices in the market place, through implementation of land use regulations and land use policies.
- P-31: Manage its Urban Growth Boundary and the lands within so as to encourage development within urban areas before conversion of urbanizable areas, through implementation of land use regulations and land use policies.

FINDINGS: Based on data contained in Table 3-2 of this Chapter, there is a projected surplus of 580.8 to 762.8 acres of industrial-zoned property as well as a surplus of mixed-use properties of 188.5 to 267.9 acres. The loss of this site will reduce the amount of industrial designated land. However, the City retains a significant surplus and the Comprehensive Plan specifically encourages the creation of a Mixed Use zone to address the unique features of the property (P-30 and P-31).

- 4. Chapter 4: Land Use – This Chapter details the goals and policies to assure the City provides different types of land within City limits that are suitable for a variety of uses. The Council finds the following policies apply:

General Policies for Land Use

- P-1: Recognize that the Comprehensive Plan land use designations or categories shall determine zoning.
- P-6: Require that changes to the Comprehensive Plan Map be consistent with the policies of the Comprehensive Plan, State law, and any adopted intergovernmental agreements.
- P-12: Ensure that the Zoning Map reflects and implements the Comprehensive Plan Map.

FINDINGS: The proposal calls for a Mixed Use Plan designation and Mixed Use zone, thereby ensuring consistency between the Plan and Zone maps (P-1 and P-12). This review addresses compliance with Comprehensive Plan policies (P-6). The State effectively acknowledged the Comprehensive Plan, therefore, conformance with these policies assures conformance with state law. Compliance with Statewide Goals will be reviewed in Chapter 10 heading.

In addition, Chapter 4, Section 5.2.1 notes the following:

Changing socio-economic dynamics as well as a shift in community values indicate that the time for redesignating two areas of Lebanon is rapidly approaching. As noted in other sections of this Comprehensive Plan, the wood products industry was once the backbone of the community's economy. A number of heavy industrial sites devoted to this sector of the economy once dominated major stretches of the community along the South Santiam River – the water way was a key transportation component of the logging industry and wood processing industries. However, these uses and their supporting infrastructure along the River have long been in decline and for the most part these industries have shut their doors. Sites which once provided the mainstay of the local and area economy now lie idle and even vacant in many cases.

These same areas along the South Santiam River are gaining new importance as community and social values also change. These areas are becoming increasingly valued for their aesthetic and intrinsic natural values. They provide critical habitat for many species of flora and fauna, some of which are threatened. Trees along the riparian corridor of the River and Cheadle Lake provide critical habitat components for a variety of fish, including summer Steelhead, spring Chinook, and fall Chinook in the Santiam. Such areas also increase value as potential sites for a mix of recreational, commercial, and residential developments.

Two key areas that fit the above description are: (1) the Lebanonite – River Road Industrial Block, and (2) the Santiam River Mixed Use Opportunity Area.

*(1) **Lebanite – River Road Industrial Block:** (Note: language omitted for brevity.)*

*(2) **Santiam River Mixed Use Opportunity Area:** This former Willamette Industries Plywood Mill site has access to a variety of City streets including a proposed new north-south arterial that would connect Grant Street and Mountain River Drive. This area has profound redevelopment opportunities that could include any critical riparian management zone along the South Santiam River as well as recreation and special natural resource amenities. This area is currently outside the City Limits, but inside Lebanon's Urban Growth Area.*

For the above noted reasons, the community may well desire to change the Comprehensive Plan Map designation on these two areas in the relatively near future. Currently both of these areas are primarily designated Industrial on the Comprehensive Plan Map. It is likely that the best redesignation would be to Mixed Use.

As with Chapter 2, this Chapter envisions non-industrial development of this site, specifically mentioning application of the Mixed Use zone. Further, as the City's acknowledged Plan includes the appropriate economic opportunities analysis, this finding addresses the sole issue raised by the DLCDC.

Policies for Industrial Uses

P-38: Maintain a supply of diverse, serviceable industrial lands that provide choices in the marketplace to attract desirable industries, particularly light manufacturing and nonpolluting industries, in support of the City's economic development program.

FINDINGS: As noted, this action will reduce the amount of available industrial land, although the City still retains a significant surplus within the UGB. In addition, the Mixed Use zone does allow limited industrial development, thereby maintaining employment options for the site. On balance, the change to a Mixed Use zone therefore does not affect the ability for the City to provide industrial land (P-38).

Policies for a Mixed Use

P-40: Encourage a mix of commercial and residential uses within individual buildings, lots, and neighborhoods, in order to promote a compact, pedestrian friendly environment. Industrial uses should be allowed to mix with residential and commercial uses where there are limited potentials for nuisance or jeopardy to the public health, safety, and welfare.

FINDINGS: This policy is keeping entirely with previously stated provisions in Chapters 2 and 4 concerning the anticipated long-term use of the site and is likely far more keeping with the adjacent residential development.

5. Chapter 5: Population & Economy – This Chapter addresses population growth and economic development as well as those trends affecting both. The Council finds the following policies apply:
Policies

P-5: Designate enough land in a variety of parcel sizes and locations to meet future employment and commercial needs.

P-8: Support diversity in type, scale, and location of professional, industrial, and commercial activities to maintain a high level of employment and to promote diversification of the local economy.

FINDINGS: Rezoning of the property to Mixed Use allows a greater variety of uses on the site than the current Industrial zoning would allow, thereby increasing its chance of development and providing employment opportunities (P-5 and P-8).

6. Chapter 6: Housing – This Chapter establishes the City’s Goals and Policies related to Housing. The Chapter does not directly apply, as it does not involve residential zoning. However, the proposal does not diminish the ability of the City to provide housing and in fact provides additional housing opportunities through the Mixed Use zoning.
7. Chapter 7: Community Friendly Development & Preservation of Historic Resources - This Chapter focuses on policies creating a built environment suitable for the needs of a diverse population through a variety of uses scaled for the pedestrian, and capable of accommodating the automobile and mass transit. The Council finds the following policies apply:

Community Friendly Development Policies

- P-9: Encourage mixed uses within individual buildings, neighborhoods, and zoning districts where allowed by planning and building codes, and where there is no or only limited potential for incompatibility or conflict with public health, safety, and welfare.
- P-10: Allow limited and appropriately scaled neighborhood commercial services in residential zones with appropriate standards to ensure compatibility.

FINDINGS: The proposed Mixed Use zone would allow mixed uses – including appropriate commercial services – on the property, thereby serving the neighborhood (P-9, P-10). Further, this type of development effectively creates a neighborhood environment that is beneficial to pedestrians.

8. Chapter 8: Transportation – This Chapter addresses the transportation needs of the City with an emphasis of creating a variety of transportation options for pedestrians, bicyclists, vehicles and mass transit. The Council finds the following policies apply:

Transportation System Planning Policies

- P-12: The transportation system shall be managed to reduce existing traffic congestion and facilitate the safe, efficient movement of people and commodities within the community.

FINDINGS: Street improvements are likely as part of any future development. However, three streets provide access to the site (Grant, Milton and Mayfly) and it may be possible to extend two additional streets at some point in the future.

ODOT requested the City address the Transportation Planning Rule (OAR 660-012-0060) to determine whether the map amendments would significantly affect planned transportation facilities. The applicable language:

660-012-0060

Plan and Land Use Regulation Amendments

(1) If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule. A plan or land use regulation amendment significantly affects a transportation facility if it would:

- (a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);*
- (b) Change standards implementing a functional classification system; or*
- (c) Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.*

- (A) Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;
- (B) Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or
- (C) Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.

The Council notes the adopted Transportation System Plan contains three existing and planned collector streets serving this property (Grant, Milton and Mayfly). In addition, the TSP calls for a collector street to effectively connect Grant and Mayfly Streets. Per the TSP, collectors are designed to connect residential neighborhoods with smaller community centers as well as access the arterial system. The three collector streets eventually connect to an identified arterial, thereby serving this purpose. The Council also notes that consistent with the Comprehensive Plan, the adopted TSP assumed a "mixed use (residential and commercial) development" at the site (page 3-2) and planned accordingly with the creation of the proposed collector streets. Therefore, as the TSP is consistent with - and effectively implements - the adopted Comprehensive Plan, the proposed map amendments do not significantly affect existing and planned for transportation facilities, thereby complying with the TPR.

- 9. Chapter 9: Public Facilities and Service - The City is required by State law to plan and develop a timely, orderly, and efficient arrangement of public facilities and services to serve as a framework for urban development. Goals and policies in this Chapter address those requirements. The Council finds the following policies apply:

General Policies

- P-8: Review all development proposals to ensure that public facilities are available and have adequate capacity to accommodate the proposed development, or that such facilities and their capacities can be made available through appropriate extensions and/or enhancements concurrent with or prior to proposed developments. *(Duplicated in Chapter 3, Urbanization)*
- P-9: Require that new developments are either served by existing and/or proposed public infrastructure improvements, and/or are served by privately funded infrastructure extensions and improvements. *(Duplicated in Chapter 3, Urbanization)*
- P-10: Consider impacts on key City-provided urban utility services (water, storm drainage, wastewater, and streets) and any other community facilities that are identified by service providers as substantially impacted by the proposal before development proposals, or rezoning applications are approved.

FINDINGS: As previously noted, based on information supplied by Engineering Services, services can be extended to the site and do not require system-wide improvements to existing public facilities. Therefore, the proposal is consistent with the noted policies.

- 10. Chapter 10: Plan Implementation, Amendment, and Land Use Planning Coordination – This Chapter establishes procedures for amending the Comprehensive Plan Map and Zoning Map. Specific applicable policies include:

- P-1: The City Council may amend the Comprehensive Plan and/or Map after referral to the Planning Commission public hearing, for action, review, revisions, and recommendations.
- P-2: Changes to the Plan and/or Map shall be made by ordinance after public hearings as prescribed by state law and local ordinances.
- P-3: Changes in the Plan and/or Map shall be incorporated directly into the document at the appropriate place. A list of all amendments with date of passage shall then become part of the document until the next comprehensive update of the entire Comprehensive Plan.
- P-4: An amendment to the Comprehensive Plan and/or Map may be considered when one or more of the following conditions exist:
 - a. Updated data demonstrates significantly different trends than previous data;
 - b. New data reflects new or previously undisclosed public needs;
 - c. New community attitudes represent a significant departure from previous attitudes as reflected by the Planning Commission or City Council;
 - d. Statutory changes significantly affect the applicability or appropriateness of existing plan policies.

- P-5: Residents, property owners, their authorized agents, the Planning Commission, the City Council, or City staff may initiate a Comprehensive Plan amendment. In order to obtain a Comprehensive Plan and/or Map amendment, the applicants shall have the burden of proof that all of the following conditions exist:
- a. There is a need for the proposed change;
 - b. The identified need can best be served by granting the change requested;
 - c. The proposed change complies with the Statewide Planning Goals; and,
 - d. The proposed change is consistent with all other provisions of the City's Comprehensive Plan.

FINDING: Policies P-1, P-2 and P-3 relate the processing of a Plan text or map amendment. The City is obligated to follow these requirements.

Comprehensive Plan Chapters 2 and 4 recognize continued use of this site for industrial purposes is inconsistent with the unique features of the site as well as adjacent residential development. As such, the proposed Plan and zone map amendments are consistent with the preferred use of the property (P-4.a). The change will allow alternative uses for the property and establishes a zone that conforms to the Comprehensive Plan expectations outlined in Chapter 2 and 4 (P-5.a and P-5.b). Further, the established of the Mixed Use zone does not preclude development of the site with industrial-type uses.

Compliance with the Statewide Goals (P-5.c) is noted as follows:

Goal 1, Citizen Involvement: Public hearings will be held before both the Planning Commission and City Council. This is consistent with City procedures and the intent of the Goal.

Goal 2, Land Use Planning: The proposal does not involve exceptions to the Statewide Goals. Adoption actions are consistent with the acknowledged Comprehensive Plan and Development Code.

Goal 3, Agricultural Lands: This Goal does not apply, as the land is not designated farmland.

Goal 4, Forest Lands: This Goal does not apply, as the land is not designated forestland.

Goal 5, Open Spaces, Scenic and Historic Areas, and Natural Resources: The Comprehensive Plan (Chapter 2) indicates the site contains important natural resources which will need to be addressed as part of any site development. However, the map changes, by themselves, do not affect these resources.

Goal 6, Air, Water and Land Resource Quality: Its potential use for non-industrial purposes is likely to reduce potential adverse impacts on air, water or resource quality.

Goal 7, Natural Hazards: Areas adjacent to the South Santiam River are located within the 100-year flood plain, and potentially floodway. Development is subject to provisions in Development Code Chapter 16.11 regarding activities within the flood plain. Conformance is addressed when development plans are submitted.

Goal 8, Recreational Needs: The proposed map amendments do not create uses which would adversely impact recreational opportunities. However, the change from Industrial to Mixed Use does create at least the potential for new recreational opportunities.

Goal 9, Economic Development: The map amendments will allow a greater variety of uses thereby increasing development potential. Further, the proposed Mixed Use zone does not preclude employment-type activities on the site.

Goal 10, Housing: This Goal does not directly apply, as the map amendments do not directly involve the supply or location of needed housing, or the ability to provide housing.

Goal 11, Public Facilities and Services: Previous findings indicate services can be extended to the site and the map amendments will not affect the City's ability to provide necessary public facilities.

Goal 12, Transportation: Previous findings indicate the map amendments will not significantly affect planned transportation improvements.

Goal 13, Energy Conservation: The map amendments are neutral with regard to energy conservation.

Goal 14, Urbanization: Previous findings indicate the City retains a surplus in both industrial and mixed use properties so that the amendments will not impact the City's ability to meet demand for land in either zone. Further, the map amendments allow development of urban uses within an urban area.

Goals 15 to 19, Willamette River Greenway, Estuarine Resources, Coastal Shores, Beaches and Dunes, Ocean Resources: The proposals do not involve land within the Willamette Greenway or coastal areas.

Finally, all previous findings indicate the proposal complies with the applicable policies of the City's Comprehensive Plan (P-5.d).

- H. Facility plans need to be consistent with the Comprehensive Plan Map as well as the text, and changes to the Map may necessitate changes to a facility plan. For example, changing a Comprehensive Plan Map designation to a higher intensity use may require an amendment to the TSP, sanitary sewer or potable water master plans.

FINDINGS: The current property is designated for Industrial uses. However, the Comprehensive Plan prefers a mixed-use type of development for the site. As such adopted facility plans are consistent with the development expectations of the site. This also includes the City's adopted TSP.

- I. Applicants proposing amendments to the Zoning Map must request a City Zoning Classification that is consistent with the Comprehensive Plan Map designation for a subject property. If an applicant requests a City Zoning Classification that is not consistent with the Comprehensive Plan Map, the zoning requested shall not be granted until the Comprehensive Plan Map is first appropriately amended to reflect concurrence. (See the Annexation Zoning Matrix, Table 16.26-1.) Such an amendment requires a separate application, hearing and decision; this process may occur concurrently with the Zoning Map Amendment hearing.

FINDINGS: Table 16.26-1 of Development Code Section 16.26.040 identifies the various Comprehensive Plan designations and the zones consistent with these Plan designations. The proposal calls for the "Mixed Use" Plan map designation, and pursuant to this Table, the only allowable zone is Mixed Use (Z-MU). Therefore, the proposed MU zone is entirely consistent with the anticipated designation. No other amendments are required.

- J. Section 16.27.080.B states that if proposed amendments to the Comprehensive Plan Map or Zoning Map do not comply with the Comprehensive Plan, the Comprehensive Plan must first be amended so that the proposed Map amendment will be consistent with and accurately implement the Comprehensive Plan.

FINDINGS: Previous findings indicate the proposal complies with the applicable Comprehensive Plan policies and does not require amendments to the Plan text. Therefore, this provision does not apply.

- K. Section 16.27.090 establishes requirements for Urban Growth Boundary (UGB) Amendments. This Section does not apply as the property lies entirely within the UGB.

VIII. CONCLUSION

The City Council concludes the proposal complies with the decision criteria for an Annexation, and, establishment of the Mixed Use Plan designation and the Mixed Use zone.

Notice of Public Hearing

Lebanon City Council

July 10, 2013

NOTICE IS HEREBY GIVEN that a public hearing will be held before the Lebanon City Council on July 10 at 6:00 P.M. in the Santiam Travel Station, 750 Third Street, to afford interested persons and the general public an opportunity to be heard and give testimony concerning the following matter:

Planning Case No.: 13-05-16

Location: 800 E Milton St

Applicant: Weyerhaeuser Real Estate Development

Assessor's Map & Tax No.: 12-2W-11-1000

Request: Annexation, Comprehensive Plan Map Change and Zone Map Change

Total Acres: 150.55

Request: The applicant is requesting Annexation of approximately a 150.55 acre territory comprised of one tax lot. The property is currently designated Industrial (C-IND) on the City of Lebanon Comprehensive Plan Map. The applicant is requesting the designation be changed to Mixed Use (C-MU) and that it be assigned a Mixed Use (Z-MU) Zoning designation.

Decision Criteria: Lebanon Development Code: Chapter 16.20 – Review and Decision-Making Procedures; Chapter 16.26 Annexations and Chapter 16.27 Comprehensive Plan Map, Zoning Map and Urban Growth Boundary Amendments.

Planning Commission Recommendation: A public hearing was held before the Planning Commission on June 19, 2013. The Commission voted to recommend City Council approval of the zone change.

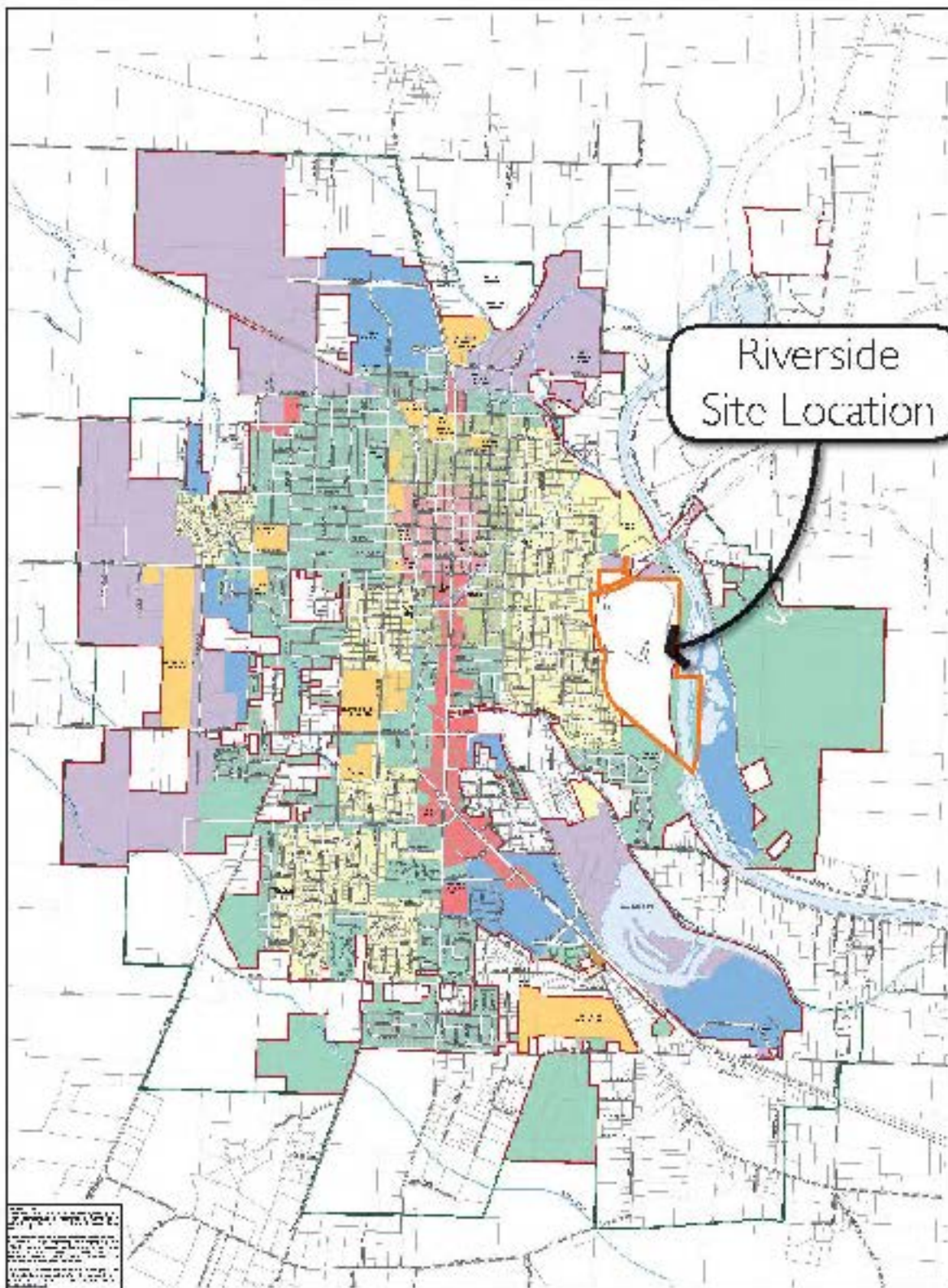
Obtain Information: A copy of the application, all documents and evidence relied upon by the applicant, and applicable criteria are available for inspection at no cost and will be provided at the cost of 25 cents per single-sided page. If you have questions or would like additional information, please contact the Lebanon Planning Division, 925 Main Street; telephone 541-258-4906. The staff report on the proposal will be available 7 days prior to the hearing.

Providing Comments: *CITIZENS ARE INVITED TO ATTEND* the public hearings and give written or oral testimony (after presentation of the staff report) that addresses applicable decision criteria during that part of the hearing process designated for testimony in favor of, or opposition to, the proposal. If additional documents or evidence are provided in support of the application subsequent to notice being sent, a party may, prior to the close of the hearing, request that the record remain open for at least 7 days so such material may be reviewed.

Appeals: Failure to raise an issue in the hearings, in person or by letter, or failure to provide sufficient specificity to afford the decision-makers an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals based on that issue. Please contact our office should you have any questions about the appeals process.



Upon request, the City will provide an interpreter for hearing impaired persons. To request an interpreter, contact the City Manager's Office at 258-4202 no less than 48 hours prior to the public hearing.

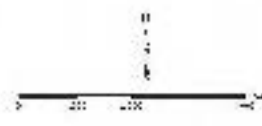


Riverside
Site Location

Lebanon Zoning Map

General Residential	Industrial
Community Residential	Office
Special Residential	Professional Office
Neighborhood Residential	Public Use
Office/Professional	Public Use
Office/Professional	Public Use

District
 Lot/Corner/Center
 Town





Vicinity Map

Riverside, Lebanon, CR
Vicinity Map: Real Estate Development Company

4/2/2013





Community Development Services

925 S. Main Street
 Lebanon, OR 97355-3211
 (541) 258-4906 (541) 258-4955 Fax
 Email: cdc@ci.lebanon.or.us
 Web: www.ci.lebanon.or.us

LAND USE APPLICATION

File No.: 13-05-16

APPLICANT INFORMATION:

Name:	Weyerhaeuser Real Estate Development Co. (WREDCo)	Phone:	253-924-3073
Address:	PO Box 9777-PH2	Cell Phone:	360-581-2048
City/State/Zip:	Federal Way, WA 98063	Email:	tim.scherer@weyerhaeuser.com

APPLICANT CERTIFICATION:

I hereby certify that the statements, attachments, exhibits, plot plan and other information submitted as a part of this application are true; that the proposed land use activity does not violate covenants, conditions and restrictions associated with the subject property; and, any approval granted based on this information may be revoked if it is found that such statements are false.

Signature of Applicant: **Date:** 5/10/2013

PROPERTY INFORMATION:

Situs Address: 800 E. Milton Street	Nearest Cross Street: Post Street
Map Designations:	Assessor Map & Tax Lot No(s): 12S02W11-01000
Comp Plan Map: C-IND, Industrial	Total Size of Site: 150.55 Acres
Zoning Map: Outside City Limits	Development Size: To Be Determined (TBD)
Overlay Zones (if any):	
Current Property Use: (or indicate if vacant) Vacant	
Existing Structures: (or indicate if vacant) Vacant, concrete slabs, roads, RR spur, footings of de-commissioned buildings, de-commissioned water/power/sewer	
Surrounding Properties Land Uses:	Zoning/Comp Plan Designation:
North: Industrial	Z-IND/C-IND
West: Residential Low Density	Z-RL/C-RL
South: Residential Mixed Density	Z-RM/C-RM
East: Residential Mixed Density, Mixed Use & Industrial	Z-RM & Z-MU / C-RM, C-MU & C-IND

GENERAL DEVELOPMENT DESCRIPTION:

Include Proposed Use(s), Activities, Hours of Operation, Etc.:

Annex WREDCo property to be within the City of Lebanon, re-zone to Zone Z-MU, and change Comprehensive Plan to C-MU (Mixed Use).

See Attached

Will the Project be constructed in phases? Yes No

If "Yes", please explain: Construction/Development is undetermined at this time.

Number of Proposed Parking	Vehicle	Bicycle
Standard Spaces: _____		Open: _____
Compact Spaces: _____		
ADA Spaces: _____		Covered: _____
Covered/Garage Spaces: _____		

RESIDENTIAL DEVELOPMENT ONLY:

Type	# of Dwelling Units	# of Bedrooms	Density (#DU/Acre)
TBD			

Describe Open Space Included in Proposal: _____

Number of Acres / Sq. Ft. in Open Space: _____ Percent of Site: _____

FOR OFFICE USE

*If more than one review process is required, applicant pays highest priced fee, then subsequent applications charged at half-price.

Land Use Review Process		Fee	Land Use Review Process		Fee
<input type="checkbox"/>	Administrative Review: Res / Com / Ind / PU	\$450	<input type="checkbox"/>	Planned Development – Preliminary	\$2500
<input checked="" type="checkbox"/>	Annexation	\$1500	<input type="checkbox"/>	Planned Development – Ministerial	\$200
<input type="checkbox"/>	Code Interpretation	\$100	<input type="checkbox"/>	Planned Development – Final (Administrative)	\$450
<input checked="" type="checkbox"/>	Comprehensive Plan Map Amendment	\$2000	<input type="checkbox"/>	Planned Development – Final (Quasi-Judicial)	\$750
<input type="checkbox"/>	Comprehensive Plan Text Amendment	\$2000	<input type="checkbox"/>	Subdivision	Varies
<input type="checkbox"/>	Conditional Use: Res / Com / Ind / PU	\$1500	<input type="checkbox"/>	Tree Felling Permit (Steep Slopes only)	Varies
<input type="checkbox"/>	Historic Preservation Review or Register	Varies	<input type="checkbox"/>	Urban Growth Boundary Amendment	Varies
<input type="checkbox"/>	Land Partition	\$450	<input type="checkbox"/>	Vacating Public Lands and Plats	Varies
<input type="checkbox"/>	Ministerial Review	\$150	<input type="checkbox"/>	Variance (Class 1 – Minor Adjustment)	\$150
<input type="checkbox"/>	Modification of Approved Plan	Varies	<input type="checkbox"/>	Variance (Class 2 – Adjustment)	\$450
<input type="checkbox"/>	Non-Conforming Use/Development	\$450	<input type="checkbox"/>	Variance (Class 3)	\$1000
<input type="checkbox"/>	Property (Lot) Line Adjustment	\$250	<input checked="" type="checkbox"/>	Zoning Map Amendment	\$1000

REVIEW PROCESS

<input type="checkbox"/>	Ministerial Review Process (LDC 16.20.030)	<input type="checkbox"/>	Quasi-Judicial Review Process (LDC 16.20.050)
<input type="checkbox"/>	Administrative Review Process (LDC 16.20.040)	<input type="checkbox"/>	Legislative Review Process (LDC 16.20.060)

APPLICATION RECEIPT & PAYMENT

Date Received: 5/13/13 Date Complete: _____ Pay't Info: cc

Received By: ID Total Fee: 3250.00 Receipt No.: 1999

REQUIRED SUBMITTALS:

- Application and Filing Fee
- Narrative describing the Development Proposal and addressing the Decision Criteria
 - * LDC Article Two Land Uses and Land Use Zones
 - * LDC Article Three Development Standards
 - * LDC Article Four Review & Decision Requirements
 - * LDC Article Five Exceptions to Standards (eg Variance, Non-Conforming Uses)
- Site Plan(s) drawn to scale with dimensions, Elevation Drawing(s) if applicable, Other Drawings
Site boundaries, points of access, topography, flood plains, water courses, significant vegetation, existing roads, utilities, pedestrian or bikeways, existing easements.
- Copy of current Property Deed showing Ownership, Easements, Property Restrictions

PROPERTY OWNER SIGNATURES:

Owner 1:	Weyerhaeuser Real Estate Development Co. (WREDCo)	Phone #:	253-924-3073
Address:	PO Box 9777-PH2	Cell #:	360-581-2048
CityStateZip:	Federal Way, WA 98063	Email:	tim.scherer@weyerhaeuser.com
Owner 2:	N/A	Phone #:	_____
Address:	_____	Cell #:	_____
CityStateZip:	_____	Email:	_____
Owner 3:	N/A	Phone #:	_____
Address:	_____	Cell #:	_____
CityStateZip:	_____	Email:	_____

CONTACT INFORMATION:

Applicant's Representative:	Peter Strelinger	Office #:	_____
Address:	98 Samish PL	Cell #:	406-471-1337
CityStateZip:	La Conner, WA 98257	Email:	bristolnw.peter@gmail.com
Applicant's Engineer/Surveyor:	TBD	Office #:	_____
Address:	_____	Cell #:	_____
CityStateZip:	_____	Email:	_____
Applicant's Architect:	N/A	Office #:	_____
Address:	_____	Cell #:	_____
CityStateZip:	_____	Email:	_____
Applicant's Other:	TBD	Office #:	_____
Address:	_____	Cell #:	_____
CityStateZip:	_____	Email:	_____



925 Main Street
Lebanon, OR 97355
(541) 258-4906 (phone)
(541) 258-4955 (fax)

Petitions for Annexation
(See Lebanon Development Code Subsection 16.26.050.B)

Please submit this Annexation Petition and the following information with your Land Use Application:

1. **Petition of Legal Property Owners:** Petition of legal property owners of territory petitioning to be annexed (page 2 of this form).
2. **Petition of Consent from Resident Electors:** Petition to consent to annexation from all electors residing within the annexation territory (page 3 of this form)..
3. **Annexation Map:** An 18" x 24" or 24" x 36" map and a photocopy reproducible map showing the property to be annexed, and all adjacent property and reference points, including but not limited to, bearings, distances, deflection angles, lean dedication corners and other benchmarks.
4. **Legal Description:** A document by legal metes and bounds description, certified by a registered Surveyor or Engineer.
5. **Narrative:** A narrative detailing how the annexation proposal satisfies the annexation Decision Criteria (attached). Please provide all narratives in both hard copy and electronic formats (if possible).

Applicant

Name of Applicant: Weyerhaeuser Real Estate Development Co. Phone: 360-581-2048

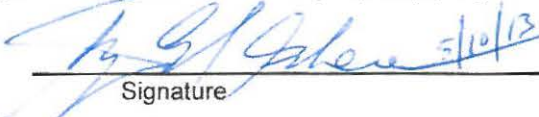
Address: PO Box 9777-PH2 City: Federal Way State: WA Zip: 98063

Petition of Legal Property Owners

Each current property owner of record must sign the application, or provide a letter authorizing an agent or representative to act on his or her behalf.

The undersigned hereby requests that a Petition for Annexation be granted on the real property described in this application, in the City of Lebanon, Linn County, Oregon.

Signature of all Owners of property proposed for annexation:

1.  5/10/13 Timothy Earl Scherer 360-581-2048
Signature Printed Phone
PO Box 9777-PH2, Federal Way, WA 98063
Address
2. No Other Owners
Signature Printed Phone
Address
3. _____
Signature Printed Phone
Address
4. _____
Signature Printed Phone
Address
5. _____
Signature Printed Phone
Address
6. _____
Signature Printed Phone
Address

(Attach Additional Sheets as needed)

Petition of Consent by All Electors Residing within the Annexation Territory

Each current resident of the annexation territory must sign the application and indicate whether or not you support the annexation (Check YES or NO), or provide a letter authorizing an agent or representative to act on his or her behalf.

The undersigned hereby requests that a Petition for Annexation be granted on the real property described in this application, in the City of Lebanon, Linn County, Oregon.

Signature of all Residents of the annexation territory of property proposed for annexation:

1. No Residents. Property is Vacant.
Signature _____ Printed _____ Phone _____
YES: _____ NO: _____
Address _____
2. _____
Signature _____ Printed _____ Phone _____
YES: _____ NO: _____
Address _____
3. _____
Signature _____ Printed _____ Phone _____
Address _____
4. _____
Signature _____ Printed _____ Phone _____
Address _____
5. _____
Signature _____ Printed _____ Phone _____
Address _____
6. _____
Signature _____ Printed _____ Phone _____
Address _____

(Attach Additional Sheets as needed)

CONFIDENTIAL Residential Information

Housing Type:

Single Unit _____ Multiple Family _____ Trailer/Mobile/Manufactured _____

Tenure:

Owner Occupied _____ Renter Occupied _____ Vacant _____

Residents			
Last Name	First Name	Sex	Age
No Residents on Property			

(Attach Additional Sheets as needed)

NOTE:
Annexation potentially changes the City's population. The above residency information is CONFIDENTIAL and is submitted to the Population Research Center at Portland State University to assist in annual population estimates for cities and counties in order to distribute state tax revenues.

Bristol Northwest, LLC

Land Use & Real Estate Consulting

Walt Wendolowski, AICP
Community Development Manager
City of Lebanon
925 South Main Street
Lebanon, Oregon 97355

Re: Riverside annexation & rezone

Dear Walt,

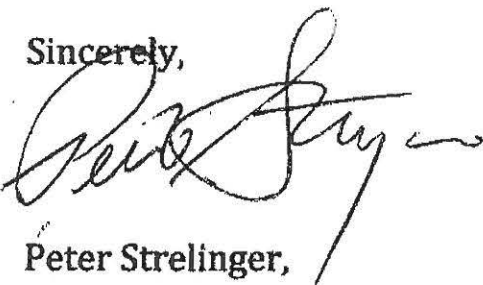
As you know the property we are calling "Riverside" is a former Willamette Industries Plywood Mill which was closed in the 90's. Weyerhaeuser acquired the property as part of the acquisition of Willamette Industries and its holdings. The property is now owned by Weyerhaeuser Real Estate Development Company (WREDCo), a subsidiary of the parent company.

Riverside is approximately 150 acres and within the City of Lebanon's Urban Growth Area. The purpose of this application is to annex and rezone the property into the City of Lebanon.

WREDCO is pleased to be working with the City to complete annexation and fulfill the Comprehensive Planning goals set forth in the City's 2004 Comprehensive Plan. Chapter 4-5.2.1, of the Comprehensive Plan, identifies the property as "Santiam River Mixed Use Opportunity Area". The Chapter further states "It is likely that the best re-designation would be to Mixed Use". WREDCo agrees and foresees a future mixed use development under the C-MU zoning classification, as appropriate and complimentary to the City and Oregon's, Statewide Planning Goals.

Thank you!

Sincerely,



Peter Strelinger,
Bristol Northwest, LLC (Applicants Representative)
Cc: Tim Scherer, WREDCo, WA/OR Operations Manager

May 31, 2013

Tim Scherer, Operations Manager-West
Mail: PO Box 9777 - Mail Stop PH2
Federal Way WA 98063-9777
Phone: (253) 924-3073, Cell (360) 581-2048, Fax (253) 924-3007
E-Mail: tim.scherer@weyerhaeuser.com

Walt Wendolowski, AICP
Community Development Manager
City of Lebanon
925 South Main Street
Lebanon, Oregon 97355

Re: Riverside Annexation and Rezone

Dear Walt,

As you know, the property we are calling "Riverside" is a former Willamette Industries Plywood Mill which was closed in the 90's. Weyerhaeuser acquired the property as part of the acquisition of Willamette Industries and its holdings. The property is now owned by Weyerhaeuser Real Estate Development Company (WREDCo), a subsidiary of the parent company.

Riverside is approximately 150 acres and within the City of Lebanon's Urban Growth Area. WREDCo requests approval of the following:

- Annexation of the property into the city limits of Lebanon, and
- Change the Comprehensive Plan map designation from Industrial (C-IND) to Mixed Use (C-MU) with a corresponding Mixed Use zone (Z-MU).

The requests for Z-MU zoning correlates with section 5.0 of the Comprehensive Plan (special redevelopment and infill opportunity areas). The Mixed Use zone and its inherent flexibility will allow appropriate development of the site that achieves the goal of community-friendly development as set forth in Chapter 7 of the Comprehensive Plan.

Section 5.2.1 (2) specifically identifies the subject property as the Santiam River Mixed Use Opportunity Area. It discusses redevelopment opportunities that include a mixed use approach that balances redevelopment with natural resource protection, riparian area preservation and public access to the Santiam River. The Z-MU zone sets the stage for a balanced approach on this important site.

WREDCo is pleased to be working with the City to complete annexation and fulfill the Comprehensive Planning goals set forth in the City's 2004 Comprehensive Plan. WREDCo agrees with the objectives set forth in the Comprehensive Plan and foresees a future mixed use development under the C-MU zoning classification as appropriate and complimentary to the City and Oregon's Statewide Planning Goals.

Sincerely,



Tim Scherer, Operations Manager

Cc Peter Strelinger
Don Hanson

DLCD Notice of Proposed Amendment or
 Periodic Review work Task Proposed Hearing or
 Urban Growth Boundary or Urban Reserve Area

THIS COMPLETED FORM, including the text of the amendment and any supplemental information, **must be submitted to DLCD's Salem office at least 35 DAYS PRIOR TO THE FIRST EVIDENTIARY HEARING** ORS 197.610, OAR 660-018-0020 and OAR 660-025-0080

Jurisdiction: **City of Lebanon**

Date of First Evidentiary Hearing: **06/19/2013**

Local File Number: **13-05-16**

Date of Final Hearing: **07/10/2013**

Is this a **REVISION** to a previously submitted proposal? No Yes Original submittal date:

- | | |
|--|---|
| <input type="checkbox"/> Comprehensive Plan Text Amendment(s) | <input checked="" type="checkbox"/> Comprehensive Plan Map Amendment(s) |
| <input type="checkbox"/> Land Use Regulation Amendment(s) | <input checked="" type="checkbox"/> Zoning Map Amendment(s) |
| <input type="checkbox"/> Transportation System Plan Amendment(s) | <input type="checkbox"/> Urban Growth Boundary Amendment(s) |
| <input type="checkbox"/> Periodic Review Work Task Number _____ | <input type="checkbox"/> Urban Reserve Area Amendment(s) |
| <input checked="" type="checkbox"/> Other (please describe): Annexation | |

Briefly Summarize Proposal in plain language IN THIS SPACE (maximum 500 characters):

Request to Annex 150.55 acres to the City of Lebanon; change the Comprehensive Plan designation from Industrial (C-IND) to Mixed Use (C-MU) , and, establish the Mixed Use (Z-MU) Zone on the newly annexed property.

Has sufficient information been included to advise DLCD of the effect of proposal? Yes, text is included

Are Map changes included: minimum 8½"x11" color maps of Current and Proposed designations. Yes, Maps included

Plan map change from: **C-IND** To: **C-MU**

Zone map change from: **UGA-UGM** To: **Z-MU**

Location of property (Site address and TRS): **800 E Milton St (T12S; R2W;S11; TL1100)**

Previous density range: **1/du/ac**

New density range: **20/du/ac**

Acres involved: **150.55**

Applicable statewide planning goals:

- | | | | | | | | | | | | | | | | | | | |
|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|-------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|--------------------------|-------------------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Is an exception to a statewide planning goal proposed? YES NO Goal(s):

Affected state or federal agencies, local governments or special districts (It is jurisdiction's responsibility to notify these agencies).

Local Contact person (name and title): **Walt Wendolowski, AICP**

Phone: **541-258-4252**

Extension:

Address: **925 South Main Street**

City: **Lebanon**

Zip: **97335-**

Fax Number: **541-258-4955**

E-mail Address: **wwendolowski@ci.lebanon.or.us**

- FOR DLCD internal use only -

DLCD File No _____

SUBMITTAL INSTRUCTIONS

This form must be submitted to DLCD at least 35 days prior to the first evidentiary hearing.
per ORS 197.610, OAR Chapter 660, Division 18 and OAR Chapter 660, Division 25

1. This Form 1 must be submitted by a local jurisdiction. Individuals and organizations may not submit a comprehensive plan amendment for review or acknowledgment.
2. When submitting a plan amendment proposal, please print a completed copy of **Form 1** on light **green paper if available**.
3. **Text:** Submittal of a proposed amendment to the text of a comprehensive plan or land use regulation must **include the text** of the amendment and any other information necessary to advise DLCD of the effect of the proposal. "Text" means the specific language proposed to be amended, added to or deleted from the currently acknowledged plan or land use regulation. A general description of the proposal is not adequate. **Please submit Form 1 with ALL supporting documentation.**
4. **Maps:** Submittal of a proposed map amendment must also include a map of the affected area showing existing and proposed plan and zone designations. The map must be legible, in color if applicable and printed on paper no smaller than 8½ x 11 inches. Please provide the specific location of property: include the site address (es) and Township/Range/Section/tax lot number. Include text regarding background, justification for the change, and the application if there was one accepted by the local government.
5. **Exceptions:** Submittal of proposed amendments that involve a goal exception must include the proposed language of the exception.
6. Unless exempt by [ORS 197.610\(2\)](#), proposed amendments must be submitted to DLCD's Salem office at least 35 days before the first evidentiary hearing on the proposal. The 35 days begins the day of the postmark, or, if submitted by means other than US Postal Service, on the day DLCD receives the proposal in the Salem Office. The first evidentiary hearing is typically the first public hearing held by the jurisdiction's planning commission on the proposal.
7. Submit **one paper copy** of the proposed amendment including the text of the amendment and any supplemental information and maps (for maps see # 4 above).
8. Please mail the proposed amendment packet to:

**ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540**

9. **Need More Copies?** Please print forms on **8½ x11 green paper if available**. If you have any questions or would like assistance, please contact your DLCD regional representative or contact the DLCD Salem Office at (503) 373-0050 x238 or e-mail plan.amendments@state.or.us.

Agenda Item 2



MEMORANDUM

Engineering Services

To: Mayor Aziz and City Council

Date: June 18, 2013

From: Ron Whitlatch, Engineering Services Manager

Subject: **APPROVAL TO AWARD PROJECT – PLACE HOLDER MEMO**
Fifth Street Waterline Replacement (Vaughan Lane to Reservoir)
Project No. 12703

On May 8, 2013, City Council authorized City Staff to advertise the Fifth Street Waterline Replacement Project for bids. The bid opening for this project is July 9, 2013. City Staff will present the results of the bid opening and a recommendation for award at the City Council meeting on July 10, 2013.



Replaces Item #2

MEMORANDUM

Engineering Services

To: Mayor Aziz and City Council **Date:** July 9, 2013
From: Ron Whitlatch, Engineering Services Manager
RE: MOTION TO AWARD CONTRACT
Fifth Street Waterline Replacement (Vaughan Lane to Reservoir)
Project No. 12703

Recommendation

This memo requests a City Council motion to award the Fifth Street Waterline Replacement Project to Pacific Excavation, Inc. of Springfield, Oregon.

Background

On May 8, 2013 City Council authorized City Staff to advertise the Fifth Street Waterline Replacement Project for bids.

Bids for the project were opened Tuesday, July 9, 2013. There were a total of four bids received; a comparison of the bids with the Engineer's Estimate is presented below:

<u>Contractor</u>	<u>Bid Price</u>
Pacific Excavation, Inc.	\$767,597.00
RJ Armstrong & Assoc.	\$771,681.80
Wildish Construction	\$832,112.80
Bill Booker Construction	\$999,900.00
Engineers Estimate	\$791,725.00

The lowest responsive bid was submitted by Pacific Excavation, Inc., of Springfield, Oregon. Pacific Excavation's bid is approximately 3 percent less than the Engineer's Estimate.

Agenda Item 3



MEMORANDUM

Engineering Services

To: Mayor Aziz and City Council

Date: July 3, 2013

From: Ron Whitlatch, Engineering Services Manager

Subject: Resolution for Restricting Parking on W Grant Street

Recommendation

Staff recommends that City Council pass a resolution to restrict parking on a portion of W. Grant between Second and Main Streets.

Background

CenturyLink Customer Service Center that is currently located at 890 S. 2nd Street is relocating to 60 W. Grant Street. The parking stalls located directly in front of 60 W. Grant Street are currently posted as three (3) hour parking. Due to the high turnover of customers, CenturyLink is requesting that the parking stall west of the alley be reduced to thirty (30) minutes time limit.

On May 13, 2013 notice was sent to surrounding property owners asking for comments or concerns regarding this change. There was one comment from Houston Jost Funeral Home in regards to the parking change possibly impacting their business by changing three of the existing 3 hour spots to 30 minute parking spots.

On June 14, 2013, I met on site with both the Funeral Home Director and a CenturyLink representative to discuss the issue. At the end of the meeting, both parties agreed that one 30 minute parking spot in front of the CenturyLink building would be acceptable.

A resolution that would authorize this change has been prepared for the Council's action. Pending Council approval the change is scheduled to be completed by the end of July 2013.

A RESOLUTION RESTRICTING STREET PARKING) RESOLUTION NO. 2013-30
ON A PORTION OF W GRANT STREET WITHIN)
THE CITY OF LEBANON)

WHEREAS, City Council being duly authorized by the Municipal Code to designate where traffic control devices shall be placed pursuant to LMC Chapter 10.16.060; and

WHEREAS, such regulation is deemed to be reasonable and necessary due to the relocation of the CenturyLink Customer Service Office;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF LEBANON AS FOLLOWS:

Section 1. Parking shall be restricted to 30 minutes along the south side of W Grant Street, beginning at the southwest corner of the Alley between Second and Main Street, extending 25 feet west.

Section 2. Suitable signs shall be erected and/or markings painted and such designation shall be a part of the traffic regulations of the City of Lebanon.

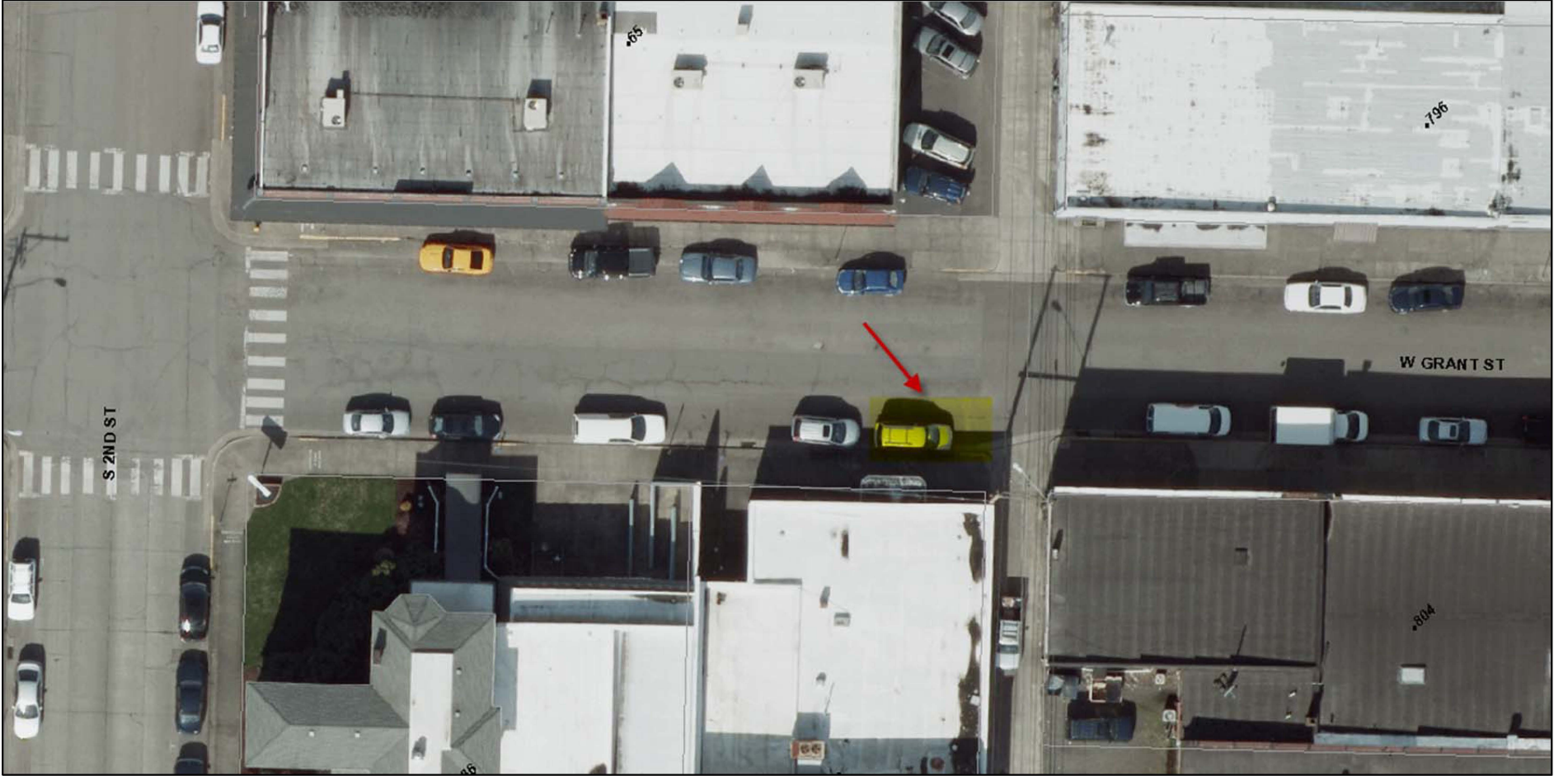
Section 3. This Resolution supersedes and replaces any conflicting portions of previous Resolutions governing parking at this location.

Passed by the Lebanon City Council and executed by the Mayor on this 10th day of July, 2013, by a vote of ___ yeas and ___ nays.

Paul R. Aziz, Mayor
Bob Elliott, Council President

Attested by:

Linda Kaser, City Clerk



Agenda Item 4



MEMORANDUM

Finance Department

To: Mayor Aziz and City Councilors

Date: July 2, 2013

From: Dean Baugh, Finance Manager

Subject: Lebanon Foundation Payment

Approved in the FY 2013-14 Budget was \$25,000 for the Lebanon Community Foundation projects. This resulted in a reduction in the General Fund contingency amount below the 10% target amount.

Councilors have expressed concern of approving the reduction in the contingency amount below the target. Staff reported that with some changes in PERS rates approved by the legislators in Salem that there could be additional funds available however, at budget time the City had not received the notification as to what the savings would be. Council voted to not release any funds to LCF until staff could report back on the PERS savings.

The City received notification on June 14 of a reduction in our PERS rate of 4.40% (from 15.61% to 11.21%), a savings in the General Fund of approximately \$132,000.

Staff recommends that Council authorize the release of the \$25,000 in funding to the Lebanon Community Foundation. Staff will bring a budget amendment to Council to adjust funding based on the PERS savings.

Public Employees Retirement System

PERS Programs

2013-15 Employer Rate Summary

About Us

Contact Us

Board

Benefit Estimator

Data Verification

Education Sessions

Actuarial/Financial

Forms/Publications

Jobs at PERS

Judge Members

New Members

Office Closures

Oregon Transparency

Perspectives Newsletters

Plan Definitions

OSGP Deferred Comp

Media Room

Health Care TPA Logon

PERS Home

The [Summary of PERS Employer Contribution Rates report](#) contains the contribution participating employers will pay beginning July 1, 2013. These rates include the rate resulting from passage of Senate Bill 822 and an accompanying budget note and were approved by the PERS Board on May 31, 2013. Official post-SB 822 rates are shown in the last three columns and pre-SB 822 rates shown in the first three columns for comparison.

Please note the following:

- The report is arranged by actuarial pool, with Independent (non-pooled) employers followed by School Districts, ending with employers participating in the State Government Rate Pool.
- Rates are applied based on pay date. These rates will be effective for payrolls after July 1, 2013, even if the pay is for work performed before that date.
- Rates in this report include normal cost, unfunded actuarial liability (UAL), side funding (if applicable), and retiree healthcare.
- Rates in this report do not include pickup of the 6 percent employee IAP contribution.
- School districts and charter schools that are not listed individually will pay the rate under the employer name "School Districts," employer number 3000, near the top of the report.

If you have any questions regarding your employer rates, please contact: Nancy Van Dyke, 7603, nancy.vandyke@state.or.us Click here for the [Summary of PERS Employer Contribution Rates report](#)

OREGON.GOV

State Directories
Agencies A to Z
Oregon Administrative Rules
Oregon Revised Statutes

WEB SITE LINKS

Text Only Site
Accessibility
Oregon.gov
File Formats

PDF FILE

Adobe Reader
View PDF file
Image to go
Adobe.

Summary of PERS Employer Contribution Rates

Rates shown reflect the effect of side account rate offsets and retiree healthcare contributions,
and exclude contributions to the IAP and debt service for pension obligation bonds.

Employer Number	Employer Name	Net Employer Contribution Rate (Pre-SB 822) 7/1/13 - 6/30/15			Net Employer Contribution Rate 7/1/13 - 6/30/15		
		Tier 1/ Payroll	Tier 2 Payroll	OPSRP General Service Payroll	OPSRP Police and Fire Payroll	Tier 1/ Payroll	Tier 2 Payroll
..... SLGRP (Default Tier 1/Tier 2 Rates)							
..... City							
2287	City of King City	20.24%	11.29%	14.02%	15.84%	6.89%	9.62%
2148	City of Klamath Falls	13.44%	9.08%	11.81%	9.04%	4.68%	7.41%
2263	City of La Grande	19.85%	10.93%	13.66%	15.92%	7.00%	9.73%
2233	City of Lafayette	14.91%	11.91%	14.64%	11.91%	8.91%	11.64%
2120	City of Lake Oswego	20.96%	16.28%	19.01%	16.56%	11.88%	14.61%
2244	City of Lakeside	12.65%	10.32%	13.05%	8.25%	5.92%	8.65%
2140	City of Lebanon	15.61%	11.67%	14.40%	11.21%	7.27%	10.00%
2298	City of Lincoln City	14.97%	11.37%	14.10%	10.72%	7.12%	9.85%
2293	City of Lowell	16.20%	14.63%	17.36%	11.80%	10.23%	12.96%
2270	City of Lyons	17.85%	15.34%	18.07%	13.45%	10.94%	13.67%
2170	City of Madras	18.40%	14.06%	16.79%	14.31%	9.97%	12.70%
2247	City of Malin	14.04%	11.91%	14.64%	9.64%	7.51%	10.24%
2281	City of Manzanita	18.44%	14.46%	17.19%	14.04%	10.06%	12.79%
2117	City of McMinnville	22.68%	18.43%	21.16%	18.28%	14.03%	16.76%
2102	City of Medford	16.66%	11.29%	14.02%	12.27%	6.90%	9.63%
2207	City of Mill City	17.45%	15.68%	18.41%	13.33%	11.56%	14.29%
2286	City of Millersburg	17.25%	15.49%	18.22%	13.33%	11.57%	14.30%
2158	City of Milton-Freewater	19.21%	17.04%	19.77%	15.07%	12.90%	15.63%
2163	City of Milwaukie	16.68%	11.62%	14.35%	12.28%	7.22%	9.95%
2157	City of Monmouth	15.95%	12.65%	15.38%	11.72%	8.42%	11.15%
2209	City of Monroe	0.59%	0.49%	0.49%	0.59%	0.49%	0.49%
2301	City of Moro	7.56%	7.95%	10.68%	3.32%	3.71%	6.44%
2302	City of Mt. Vernon	10.68%	9.58%	12.31%	6.52%	5.42%	8.15%
2197	City of Myrtle Creek	15.14%	11.87%	14.60%	11.36%	8.09%	10.82%
2183	City of Myrtle Point	11.83%	7.88%	10.61%	7.43%	3.48%	6.21%
2777	City of Newberg	19.08%	11.90%	14.63%	14.91%	7.73%	10.46%
2276	City of Newport	16.99%	8.07%	10.80%	13.07%	4.15%	6.88%
2292	City of North Bend	18.26%	12.87%	15.60%	13.94%	8.55%	11.28%
2192	City of North Plains	19.00%	12.81%	15.54%	14.60%	8.41%	11.14%
2308	City of North Powder	17.56%	13.31%	16.04%	13.16%	8.91%	11.64%
2166	City of Nyssa	19.73%	14.98%	17.71%	15.49%	10.74%	13.47%
2143	City of Oakland	25.31%	22.33%	25.06%	21.78%	18.80%	21.53%
2168	City of Oakridge	24.36%	19.59%	22.32%	20.08%	15.31%	18.04%
2119	City of Oregon City	16.91%	12.44%	15.17%	12.51%	8.04%	10.77%
2154	City of Pendleton	17.43%	12.10%	14.83%	13.03%	7.70%	10.43%
2187	City of Philomath	16.83%	12.76%	15.49%	12.57%	8.50%	11.23%
2249	City of Phoenix	12.92%	7.16%	9.89%	8.52%	2.76%	5.49%
2161	City of Pilot Rock	23.61%	19.47%	22.20%	19.47%	15.33%	18.06%
2184	City of Port Orford	16.93%	14.60%	17.33%	12.53%	10.20%	12.93%

Agenda Item 5



MEMORANDUM

Finance Department

To: Mayor Aziz and City Councilors

Date: July 1, 2013

From: Dean Baugh, Finance Manager

Subject: Budget Resolution Levying Taxes 2013-14

Per Sandy at the Linn County Assessors office, the State of Oregon requires the delinquent sewer and storm drain charges to be listed on the resolution levying taxes. The problem is the Resolution levying taxes needs to be approved by the City Council by June 30 of each year and the amount of the delinquent sewer and storm drain charges are not available until July 1 each year. This will require the City to approve the Resolution levying taxes in June and then amend the Resolution each July.

We are amending Resolution No. 2013-21 to reflect the delinquent sewer and storm drain assessments. All other provisions of Resolution No.2013-21 remain in effect as of the date of its passage.

This Resolution is effective immediately upon its passage.

Finance Department

**A RESOLUTION AMENDING SECTION 1 OF) RESOLUTION NO. 2013-31
 RESOLUTION NO. 21 (2013 – Levying Taxes)
 FY 2013-14) TO INCLUDE DELINQUENT SEWER)
 AND STORM DRAIN ASSESSMENTS)**

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF LEBANON AS FOLLOWS:

Section 1: Section 1 of Resolution 21, approved by the Lebanon City Council on June 12, 2013, is amended to include the following:

	<u>Subject to the General Governmental Limitation</u>	<u>Excluded from the Limitation</u>
Delinquent Sewer Charges		\$ 61,207.09
Delinquent Storm Drain Charges		\$ 8,335.17

Section 2: All other provisions of Resolution No. 21 remain in effect as of the date of its passage.

Section 3: This resolution is effective immediately upon its passage.

Passed by the Lebanon City Council by a vote of ____ for and ____ against and approved by the Mayor on the 10th day of July 2013.

CITY OF LEBANON, OREGON

 Paul R. Aziz, Mayor
 Bob Elliott, Council President

ATTEST:

 Linda Kaser, City Clerk

Agenda Item 6



MEMORANDUM

Finance Department

To: Mayor, City Council & City Manager

Date: July 2, 2013

From: Dean Baugh, Finance Manager

Subject: City Contingency Fund

A request was made by the City Council to discuss the City contingency fund amount.

The City currently does not have a formal contingency policy adopted by the Council. The Council discussed this topic over four years ago. The information was passed on to the current Finance Director by the previous City Manager, that Council had set an unofficial target goal of a 10% contingency in the General Fund.

In FY 2010, the budgeted contingency was approximately 8.7%, staff has worked over the past four years to increase the budgeted contingency to the 10% target, and over the last two budget cycles this goal has been achieved.

According to Oregon budget law, moneys budgeted as contingency can't be spent unless the budgeting authority (in our case the City Council) authorizes a budget amendment, moving the amount out of contingency and into an expense line item.

Agenda Item 7



Legal

John Kennedy, City Attorney

To: Mayor Aziz and City Councilors

Date: July 2, 2013

From: John Kennedy, City Attorney

Subject: Disorderly House Ordinance Amendment

The proposed amendments to Lebanon's Disorderly House Ordinance are presented at the request of the Lebanon Police Department and the City Prosecutor's office.

The current ordinance requires that, to be declared a disorderly house, a residence must get "more than two complaints requiring a police response." This has led to frustration with Lebanon police officers who have to wait for a third complaint before issuing a citation. This amendment would allow police officers to issue a citation on the second complaint.

Additionally, the amendments define "loud noise" for purposes of the ordinance. Because Lebanon's noise ordinance is based on decibel readings, it is often impractical or impossible to apply that ordinance to residential noise disturbances. The amendments provide the police department with the ability to cite violators for noise "that is plainly audible at a distance of 50 feet." This standard has been used successfully in other Oregon communities.

A BILL FOR AN ORDINANCE AMENDING CHAPTER 9.04.010 OF THE LEBANON MUNICIPAL CODE DEFINING “DISORDERLY HOUSE” AND DEFINING “LOUD NOISE”))))	Ordinance Bill No. 2013-4 Ordinance No. 2845
---	------------------	---

WHEREAS, Lebanon has a Disorderly House ordinance contained in Chapter 9.04; and

WHEREAS, the Lebanon Police Department has been frustrated in its efforts to address public complaints regarding loud noises and disturbances because the current ordinance requires “more than two complaints” in a twenty-four hour period before a house can be identified as a disorderly house; and

WHEREAS, the current ordinance fails to define “loud noise” which has led to confusion and uncertainty in certain situations.

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

Section 1. Section 9.04.010 of the Lebanon Municipal Code is hereby amended to read as follows:

9.04.010 Definitions

As used in this title, the following words mean:

"Disorderly house" means any house or place kept or maintained for the purpose of prostitution or illegal gambling, including any place, room or building used for the consumption, sale or disposition of liquor, narcotics, dangerous drugs or tobacco contrary to law, or any residential house or affiliated structure that within a twenty-four hour period, causes more than one complaint requiring a police response to investigate and/or quell loud noise, disturbances, or domestic disturbances when the complainant is someone other than a party or person involved in the noise or disturbance.

“Loud noise” means:

The use or operation of a radio, television, boom-box, stereo, musical instrument, or similar device that produces or reproduces sound in a manner that is plainly audible to any person other than the player(s) or operator(s) of the device, and those who are voluntarily listening to the sound, and which unreasonably disturbs the peace, quiet, and comfort of neighbors and passers-by, or is plainly audible at a distance of 50 feet from any residence.

Yelling, shouting, hooting, whistling, or singing in residential or noise sensitive areas or in public places, between the hours of 10:00 p.m. and 7:00 a.m., or at any time or place so as to unreasonably disturb the quiet, comfort, or repose of reasonable persons of ordinary sensitivities or is plainly audible at a distance of 50 feet from any residence.

Unreasonably loud and raucous noise emitted by an animal or bird for which a person is responsible. A person is responsible for an animal if the person owns, controls or otherwise cares for the animal or bird.

"Minor" means any person under the age of eighteen years, except as otherwise provided.

"Persons" means a natural person, firm, partnership, association or corporation, whether the persons or the corporation is acting for himself or itself, or as the clerk, servant, employee or agent of another.

"Public place" means a building, way, place or accommodation, whether publicly or privately owned, which is open and available to the general public.

Passed by the Lebanon City Council by a vote of ___ for and ___ against and approved by the Mayor on this 10th day of July, 2013.

CITY OF LEBANON, OREGON

Paul R. Aziz, Mayor
Bob Elliott, Council President

ATTEST:

Linda Kaser, City Clerk

Agenda Item 8



MEMORANDUM

Administration Department

To: Mayor Aziz and City Council

Date: July 3, 2013

From: Jon Nelson, Interim City Manager

Subject: City Manager's Report

Attached is the City Manager Report for this past month. The report will also be shared with interested parties and have a separate link on the City's website.

Please call should you have questions.

JN/jb

REPORTING PERIOD: June 2013

ORGANIZATIONAL HIGHLIGHTS – Jon Nelson, Interim City Manager

- Prep work for City Manager candidates’ interviews continues with notable coordination work facilitated by Linda Kaser.
- Extension of the Lowes payment due date results in approximately \$1.2 million in interest savings. Dean Baugh reports a good Moody’s rating conference call.
- A new agreement with the City of Albany, to be reviewed by City Council this fall, will address canal maintenance and Building Lebanon Trails’ issues that are pending.

I. ADMINISTRATION – Jon Nelson, Interim City Manager

- **Economic Development.** Staff is working with industrial site owners in Lebanon to update the state’s Expand in Oregon online site selector tool.

On July 11, Staff will be hosting a tour of four of our industrial sites to Business Oregon’s new Industrial Lands Specialist, Sierra Gardner.
- **Human Resources.** A new employee evaluation notice system has been implemented

II. LEGISLATIVE / CITY CLERK – Linda Kaser, City Clerk

City Council Pending Projects (Goals) Update:

- **Utility Billing Collection Survey.** This Survey went live on Survey Monkey on June 14. As of June 21, we have received 61 completed online surveys. Staff will continue to refresh the City's Web and Facebook pages to inform utility bill customers of this opportunity to be included in the policy making process.
- **Customer Service Survey.** As you know, survey brochures are located at each City public counter as well as on our social media sites. Since my last report, I have received one completed survey. This surveyor did not leave their name or contact information. They did indicate that they are a city resident and land owner seeking Water/Sewer Billing services.

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A "Superb" grade was given in the areas of Professionalism/Courtesy and Knowledge/Helpfulness. A "Needs Improvement" grade was given in the following areas: Accuracy/Completeness of Information, Timeliness (3 months was too long), and Overall Satisfaction (service was ok – disagree with responses). Comments provided on ways we can improve: Charging owners for services not provided is stealing.

- **Employee Satisfaction Survey.** Nothing new to report at this time.
- **Website and FaceBook Pages.** I anticipate that the website upgrade will be completed by mid-September.
- **Public Records Requests.** I received a citizen request for documents concerning investigation and due process notices involving former Police Sergeant Fila. These records were not released as City Attorney Kennedy determined that these records are not subject to production mainly due to attorney client privileged information.
- **City Manager Recruitment.** With the Candidate "Meet and Greet" on July 11 and interviews on July 12, the Administration staff has been very busy making sure that every detail is met.

III. COMMUNITY DEVELOPMENT – Walt Wendolowski, Manager

- **Planning.** The Planning Commission reviewed a request by the Weyerhaeuser Real Estate Development Company to annex the old Weyerhaeuser mill site. Concurrent with the annexation, the applicant requested approval to change the zoning from Industrial to Mixed Use, a change actually encouraged by the City's Comprehensive Plan. The property contains some 150-acres. There are no development plans at this time and additional public hearings will be necessary to develop the site. The Commission recommended Council approve both requests and the City Council will review the application at their July 10 meeting.

At their upcoming July meeting, the Planning Commission will consider two amendments to the Development Code. The first concerns the use of wind energy systems in the Industrial zone. The language would not allow a "wind farm", however permits the use of individual wind turbines to power industrial facilities. The second proposal cleans up language regarding the parking/storage of recreational vehicles on private property. Strict interpretation of our Code might prohibit parking an RV on the driveway; the changes would clarify the language to ensure this is permitted, fully recognizing this reflects the current reality.

- **Building.** Last month, I noted that building fees for this fiscal year exceeded the budget projections. This month I will note these fees greatly exceeded our projections, primarily as the result of the ODVA project. For FY 2012-13, the City received \$359,622 in building fees; this compares to only \$195,774 for FY 2011-12. The increase is certainly reflected in construction values: FY 2012-13 - \$39,776,721; FY 2011-12 - \$125,164,069. Of particular interest is a slight up-tick in single family home construction.

[Building] fees greatly exceeded our projections, primarily as the result of the ODVA project

The City issued only 17 single family building permits in the previous four years (2009 to 2012). So far, 10 permits were issued in the first six months of 2013.

- **Public Event Permits.** The City received two new Public Event applications. One is for a Master Permit to conduct the Sea Dog Nights “pirate-fest”. The organization will conduct two camping events each year for the next five years, one in July, the second in late August. Another group with a similar theme will conduct a camping event toward the end of August. At this rate the Jolly Rodger may become the official City flag
- **Grant.** The City submitted a grant to Oregon Parks and Recreation for sidewalk and trail improvements at Academy Square. Unfortunately, we were not successful in receiving an award.
- **Staff.** July office hours will be changed a bit to reflect staff vacations. Basically we will be opening a half-hour later (at 7:30 am) from July 1 to 3, and, July 8 to 11. We will also be closing at 11:30 am on July 12 instead of at 1:00 pm. The office will be closed on July 4 and July 5.

IV. ENGINEERING SERVICES – Ron Whitlatch, Manager

- The City’s contractor has installed all of the underground utilities on the Westside Interceptor Project. They have also completed the excavation on 12th Street and started placing curb and gutter. Staff has requested that the contractor excavate and install new base rock on Sherman Street (12th to Airway) and Airway Road (Sherman to Oak) due to the existing road base failure. The original contract did provide for some base repair and all new surfacing, but it looks like the better option may be to construct new road base and use the unit prices from the contract. There are funds available and programmed to cover the extra work which would be approximately \$60k to \$70k.
- Lebanon staff met with City of Albany staff to discuss an array of Public Works issues that impact both communities. Staff from both agencies will be developing a new canal maintenance agreement that will hopefully be brought to the City Council for consideration sometime this coming fall. Also discussed were: Lebanon’s proposed water intake for the new Water Treatment Plant; trails along the canal; and overall cooperation between both jurisdictions. The goal of the meeting was to improve relations between the two organizations. I believe we are off to a good start.
- Quotes to repave Filbert Street have been received. North Santiam Paving was the low quote (\$50,000), and will commence work in early July.
- Holderman Paving completed the ADA parking improvements at the Cheadle Lake Boat Ramp. The City received a grant for this work which also included additional parking lot paving and an ADA accessible trail over the weir.
- As part of the improvements to McKinney Lane associated with the new apartment complex, the City will be participating financially in additional road widening. The widening was not a requirement of the developer, rather Staff determined that an additional 4 feet of paving would eliminate several maintenance and parking issues along the west side of McKinney Lane. Armstrong & Associates will be performing the work (\$28,000) in conjunction with the required improvements along McKinney Lane.

- The contractor who will be building the water reservoir on S. 5th Street has cleared the trees on the site and has begun to mobilize their equipment. The project will take 9 to 10 months to complete.
- Hobbs and Arlene Streets pre-construction and neighborhood meetings were held on Thursday, June 27th. Nine property owners showed up for the meeting. Staff outlined the scope of the project and what they can expect to see during the construction of the project this summer. Construction is scheduled to begin in mid-July.
- Staff completed all of the site visits and owner/operator interviews for the four firms proposing to design the new Water Treatment Plant. Staff will be scoring and ranking the proposals and checking references. We hope to have a recommendation to City Council in August/September as to which firm to hire.
- Staff has been working with design professionals and various contractors to finalize the Dialysis project on the Samaritan Campus. We are very near granting a certificate of occupancy.
- The Veteran's Home buildings are under construction. Staff has been working with design professionals and various contractors to resolve some drainage utility design/construction issues. We have yet to receive the site grading plan from the landscape architect.
- Ridgeway Butte subdivision design is continuing. Staff has been working with the developer and design professionals to resolve coordination of design review with Linn County Road Department, and other design and surveying issues.
- Staff reviewed revised plans for the Event Center site on the Samaritan Campus. The public improvement drawings and site plans were approved. The building floor has been prepped and the parking lot was excavated.
- Staff received site plans and has begun review for the Samaritan Hotel and Restaurant.

V. FINANCE SERVICES – Dean Baugh, Manager

- **Liability Insurance Renewal.** Met with insurance broker multiple times going over insurance rate projections and ideas to reduce the cost.
- **Work Comp Insurance Renewals.** Met with insurance broker multiple times going over insurance rate projections and ideas to reduce the cost. Result is a change in carriers for the next fiscal year to SAIF Corporation.
- **Health Insurance Renewal.** Met with insurance broker multiple times going over insurance rate projections and ideas to reduce the cost. Still waiting for additional quotes.
- Staff will be meeting with LBCC on system development charges on the transportation facility on W. Oak Street.
- Met with Councilor Bolen to discuss a water complaint. Bolen listened to the phone call and responded that staff was "polite and professional".
- Met with Mr. Walker at Wells Fargo (the new investment advisor assigned to our account).
- Annual Employee Safety Bar-B-Q was held June 20th.

- Conference call with Moody's on bond rating. Gave a presentation on what is happening in the City of Lebanon, economically and fiscally.
- Participated in multiple meetings with Key Bank on the proposed Northwest URD bond to be issued in July 2013; gathering information and preparing documents.
- Met with Springbrook on the HR software implementation; setting up meeting and date to move forward on this project.
- **Fiscal Year end.** June 30 was the end of the Fiscal Year. This is a busy time of year for Finance preparing end of fiscal year items to prepare for the annual audit. This year the City has contracted with a new audit firm, Accuity LLC.
- **Audit.** Interim audit field work was completed in May.
- **ADP Closeout.** We are still working with ADP to close out our contract with them to process payroll. The conversion back to Springbrook is going smoothly and should be completed in July.
- **Rehab Loans.** Per State requirements all rehab loans have been transferred to Willamette Neighborhood Housing Services and remaining cash (approx. \$60,000) was contributed to local food banks.
- **Accounts Payable.** 388 invoices were processed for payments of \$1,393,275
- **Utility Billing.** Payments of \$716,833 were received, \$181,626 were online, over the phone, CC payments, the balance were over the counter or through the mail

VI. INFORMATION & GIS SERVICES – Brent Hurst, Manager

Information Services. The main focus this month has been preparing for the final stage of the City Hall camera project.

- Attended camera software administration training.
- Finished bringing online additional NetApp storage for camera recordings.
- Working on bringing online a Disaster Recovery storage array for off-site replication of data.
- Initial servers for cameras installed.
- Replaced three public access workstations at the Library with existing used equipment and added an additional two to replace workstations that had been offline for a few months to prepare for additional usage of computer workstations by patrons during the summer months at no additional capital expense to the City. The goal is to replace temporary workstations with virtual desktops by late summer and make older workstations only a client.
- Upgraded domain controllers for Fire District in order to prepare to install new workstations for Lt. and Battalion Chiefs.
- Resolved outstanding issues with in-car video systems in Patrol and base-lined fleet to a working status.
- Worked with Library to install a music download and foreign language download service.

- Cleaned overgrown vegetation at Peterson Butte cell tower.
- Received demo MDT for Fire District to start pilot of new EMT program using hybrid tablet\laptop unit.
- Started upgrade of high availability workstations in Police dispatch.

GIS Services. The primary focus for this month has been the completion and stabilization of the new web mapping applications. This is the last phase of migration for the GIS system to the new server environment and upgraded software version. When city staff have been trained and familiarized with the new web mapping applications, the old GIS system will be powered down. The focus for next month will be to resolve any repercussions of powering down the old system that have not been anticipated, as well as the continued training and fine tuning of the new system as we begin to receive feedback.

- Resolved permissions and web service publishing issues on GIS01 server.
- Created Engineering and Library web map applications; configured Engineering web map and began configuring Library web map.
- Completed recreation of Accela Address/Parcel/Owner Export tools for the State of Oregon ePermitting System.
- Coordinated data transmittals, requests, and verifications with Linn County GIS and Project Delivery Group LLC.
- Continued creation of Information Systems dataset.
- Created and delivered maps or map books to the Community Development Manager, Maintenance Manager, and Water Crew Chief.

VII. LIBRARY – Carol Dinges, Manager

- The Summer Reading Program is off to a very good start, with higher than anticipated sign-ups and attendance at programs. Soil Science Day was particularly popular, with 139 attending and very positive feedback from parents and children.
- The library is adding two new resources to the collection: Freegal™, a legal music download resource which allows patrons to permanently download up to three items per week from their very extensive catalog; and Rocket Languages™, an online language learning program offering instruction in ten languages, plus sign language, and English for Spanish Speakers. These should be available to access on the library webpage (www.lebanon.plinkit.org) for patrons with LPL library cards in early July.
- Several technology issues have been taken care of – patron self-service printing and copying are working well, and self-service fax has been added, which is also working properly. IS has put together several public access computers to replace those that had quit working, which should tide us over until the virtual equipment is ready in a few months.
- A new tech issue has emerged – one circulation station has been on the Albany network, which had been necessary before we migrated to the new Evergreen Integrated Library System (ILS) software a year ago. That network connection has recently started causing the workstation to shut down about once every day or two. After troubleshooting several

possible causes, IS has determined that the best course of action will be to move that station to the Lebanon network which of course isn't as simple as it ought to be. This work is scheduled to begin in mid-July.

- Staff evaluations are now up to date.
- A three-year Library Services and Technology Act (LSTA) grant to offer reduced-cost non-resident patron cards to Linn County residents has now ended. The Lebanon Public Library issued 569 patron cards in the course of this program.

VIII. MAINTENANCE – Jason Williams, Manager

- Crews finished the Filbert Street water line installation; contract has gone out for paving.
- 80% completion on the Senior Center community gardens
- Completed ODFW paving grant at Cheadle Lake
- Replaced numerous leaking water services and repaired two leaking water mains.
- Replaced numerous concrete panels that were removed over the course of the last month for utility repairs.
- Replaced two failing sanitary sewer laterals on 12th Street.
- Removed kitten from storm line.
- TV'd sanitary lines on Berry Street and 12th Street for contractors and Engineering.
- City wide mowing for Streets, Parks and the Storm section is in high gear.
- Removed a large tree from E. Ash Street that blew down in road way.
- Completed 62 utility locates
- Delivered 401 late notice door hangers for the water section
- Locked off 41 water services for non-payment
- Reconnected 45 water customers
- Collected 65 system wide water samples
- Finished lead and copper samples and shipped to the lab.
- Crews responded to 4 utility hits by contractors and made necessary repairs.
- Re-connected the bike shelter to power for the Farmers Market at the Grant and Main St. parking lot.

IX. POLICE – Frank Stevenson, Chief of Police

- To assist in providing better coverage for the city parks and downtown area, reserve officers will be utilizing bicycles for patrol. This project is nearing the end and we are currently awaiting special riding gear and uniforms, all of which are funded by the Reserve Program.

- During the month, 88 individuals were booked and released, brought to court or sentenced in the Lebanon Municipal Jail. A combined 183 days were served by inmates in the Lebanon Jail.
- Patrol Division continues to be busy with approximately 1,900 calls-for-service so far for the month. A highlighted case involved 11 vehicles being damaged at the National Guard while troops were on a 3 week training deployment. Currently, no leads have developed but detectives and patrol are aggressively pursuing leads.
- Officer Eric Stein graduated from the Police Academy on June 14th and is currently working with his field training officer to finish up his training.
- Officer Joseph Staub also graduated the Police Academy on June 14th and was awarded the academic award for outstanding academic achievement. He also received the Victor G. Atiyeh award, one of the top honors given to a student at the Police Academy. This award is for exceptional professionalism, exemplary attitude and outstanding achievement in leadership, academics, health and fitness and survival skills. Officer Staub is currently on deployment for training with the National Guard and is returning to police work on August 16th when he will finish up his training with a field training officer.
- Lebanon Police Department will be hosting a Pursuit Policy Review training class at the Justice Center, with assistance from Oregon Peace Officer Association. The course is scheduled for August 8th.
- Kristen Barnes was hired as a temporary employee to help assist in our Records Division while one of the FTE records clerks (Patty Melson), who is also a certified police dispatcher, fills in as a communication specialist in dispatch.
- Several community policing events/activities took place during the month of June. These activities include (but are not limited to): McGruff was escorted in the Jr. parade, as well as during the Grand Parade; Pioneer School 1st graders (2 classes, 27 students in each class) received a tour of the Justice Center; a meeting to address several issues was conducted at Oak Terrace (It went very well and resulted in some solutions to solve their issues); Cast with a Cop was conducted on June 14th (26 children got to go fishing with police officers and Home Depot employees); Self Defense classes were hosted by LPD for the second time and proved to be a very successful event); a meeting with LOWES was conducted concerning their sponsorship for a bike rodeo at National Night Out; and, deferral classes are continuing to increase in size since the reactivation of our Motors Team.
- Officer Luttmer has finished with his training and will begin patrolling with LPD motorcycle as part of the traffic team beginning Monday, July 1st.

X. SENIOR SERVICES – Kindra Oliver, Manager

- Our Senior Community Garden is almost complete and we have 19 people signed up to plant and maintain a garden plot. People are very excited about this opportunity! Thank you so much to Jason Williams, Tristan Nichols, Ricardo Vargas, and other Maintenance staff doing such a beautiful job! They are hard workers!

- Our SoGo (Seniors on the Go) Adventure Club adventures are well attended! We have lots of fun activities scheduled for the next couple of months and will continue through the fall and winter as well.
- We held our fifth annual luau on Saturday and we had almost 200 people join in the festivities! We offered pulled pork, traditional Hawaiian macaroni salad and other much more! We put on a wonderful Hawaiian show and had nothing but positive feedback about what a great time everyone had. We charged \$3 per person this year.
- I am working on finalizing my year-end reports for the various Dial-a-Bus grants we have through the county and state.
- I have most of the updated policies and procedures for the Senior Center and Dial-a-Bus in draft form and am meeting with a sub-committee from Advisory Board in a couple of weeks to review and make final recommendations. The Advisory Board will meet on August 28th to review revised manuals.

Senior Center Upcoming Events/Activities:

- Gardening Class with Master Gardner, July 1st, 10:00 am
- Intro to Facebook, July 2nd, 1:00 pm
- Fourth of July Picnic, River Park – SoGo Adventure – July 3rd, 10:00 am
- Birthday Celebration/Ice Cream Social – July 3rd, 12:30
- Miniature Golf, Lakeshore Lanes – SoGo Adventure – July 10th, 9:00 am
- Secret Pals – July 12th, 10:30 am
- Movie: Django Unchained – July 12th, 1:00 pm
- Rock Hounding, Calapooia – SoGo Adventure – July 17th, 9:00 am
- Potluck, Birthday Theme! July 18th, Noon
- Movie: Spencer’s Mountain – July 19th, 1:00 pm
- Sip & Swirl Wine Tasting Event and Entertainment by Lavinia Ross, at Academy Square! Monday, July 22nd, 5:00-7:00 pm
- Birding, at Silver Falls – SoGo Adventure – July 24th, 9:00 am
- Annual Junior/Senior BBQ, with the Boys and Girls Club! July 25th, Noon
- Movie: Temple Grandin – July 26th, 1:00 pm



July 2013

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
	1	2 7 pm Trails Committee Mtg @ Lebanon Hospital	3 1 pm Senior SoGo: 4 th of July Picnic @ River Park	4 City Offices Closed 6 pm Star Spangled Celebration at Cheadle Lake	5 City Hall Closed	6
7	8	9 11:30 am Mayor Aziz – Speaker at Chamber Women in Bus. Lunch 4:30 Library Advisory Board Mtg 6 -8 pm Concerts in the (Ralston) Park Trevor Tagle Music	10 9 am Senior SoGo: Miniature Golf @ Lakeshore Lanes 6 pm City Council Mtg	11 3 – 6 pm Downtown Farmers Market 5:30 pm CM Candidates Meet & Greet at Library	12 COMP-NW Annual Golf Tourney - Mallard Crk 1 pm Senior Movie: <i>"Django Unchained"</i>	13 9 am Cheadle Lake Market 10 am BLT Hike: Cheadle Lake N. Parking Lot
14	15	16 6 -8 pm Concerts in the (Ralston) Park Misplaced Tropics	17 9 am Senior SoGo: Rock Hounding - Calapooia 6:30 pm Planning Commission	18 3 – 6 pm Downtown Farmers Market	19 Linn County Fair 1 pm Senior Movie: <i>"Spencer's Mountain"</i>	20 Linn County Fair
21 Linn County Fair	22 5 – 7 pm Senior Sip & Swirl Wine Tasting @ Academy Square	23 6 -8 pm Concerts in the (Ralston) Park Bush Pilots	24 9 am Senior SoGo: Birding @ Silver Falls	25 3 – 6 pm Downtown Farmers Market	26 1 pm Senior Movie: <i>"Temple Grandin"</i>	27 9 am Cheadle Lake Car Show & Market
28	29	30 6 -8 pm Concerts in the (Ralston) Park Cloey & Friends 1 pm Free Notary Seminar @ Justice Center	31	1 3 – 6 pm Downtown Farmers Market	2	3

*Executive Session

Per ORS 192.660(2)(h) To consult with counsel concerning the legal rights and duties of the public body with regard to litigation or litigation likely to be filed.

** Executive Sessions are closed to the public due to the highly confidential nature of the subject. It is unlawful to discuss anything outside of the Executive Session.*



MEMORANDUM

Administration Department

To: Mayor Aziz and City Council

Date: July 3, 2013

From: Jon Nelson, Interim City Manager

Subject: Executive Session

An Executive Session is included on the July 10 Council Agenda:

Per ORS 192.660(2)(h) To consult with counsel concerning the legal rights and duties of the public body with regard to litigation or litigation likely to be filed.

Actual decisions must be made in public session. However, discussions can occur in Executive Session.

JN/jb

City of Portland v. Oregonian Pub. Co.

Court of Appeals of Oregon. | June 1, 2005 | 200 Or.App. 120 | 112 P.3d 457

Document Details

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Search Query: oregonian portland public records

Jurisdiction: Oregon

Outline


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Attorneys and Law
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Parallel Citations
(p.3)

Delivery Details

Date: July 10, 2013 at 6:53PM

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Status Icons: 

200 Or.App. 120
Court of Appeals of Oregon.

CITY OF **PORTLAND**, an Oregon
municipal corporation, Appellant,

v.

OREGONIAN PUBLISHING
COMPANY, Respondent.

0310-11712; A124262. | Argued and
Submitted Feb. 1, 2005. | Decided June 1, 2005.

Synopsis

Background: After being ordered by county district attorney to produce certain documents relevant to the investigation and discipline of a police officer who shot and killed a civilian during a traffic stop, city filed an action seeking a declaration that it was not required to disclose the documents. The Circuit Court, Multnomah County, Michael C. Zusman, Judge Pro Tempore, affirmed the district attorney's order. City appealed.

[Holding:] The Court of Appeals, Schuman, J., held that the requested documents were not exempt from disclosure under the Oregon **Public Records** Law.

Affirmed.

Attorneys and Law Firms

****457 *120** Harry Auerbach, City of Portland City Attorney, argued the cause for appellant. On the brief was Tracy Pool Reeve, Portland.

****458** Charles F. Hinkle, Portland, argued the cause and filed the brief for respondent.

Before WOLLHEIM, Presiding Judge, and EDMONDS* and SCHUMAN, Judges.

Opinion

***122** SCHUMAN, J.

The Circuit Court of Multnomah County, affirming an order of the county's district attorney, ordered the City of Portland to produce certain documents relevant to the investigation and discipline of a police officer who killed a civilian during a

traffic stop. The city argues that the benefit flowing to the public from nondisclosure—namely, that public employees will be more likely to evaluate their supervisors, subordinates, and colleagues with candor if they know the evaluation will not be made public—clearly outweighs the benefit flowing to the public from disclosure itself. ORS 192.502(1). We disagree with the city, and therefore we affirm.

The following facts were included in material that has already been disclosed to the public, and they are not disputed in this appeal. On May 5, 2003, Portland Police Officer Bean made a traffic stop of a car carrying a driver and two passengers. One passenger, Kendra James, was riding in the back seat. When Bean discovered that the driver could not produce a license and that both passengers had outstanding arrest warrants, he decided to take all three occupants into custody. Officer McCollister, the police officer whose disciplinary investigation generated the documents at issue in this case, and another officer answered Bean's call for assistance. After the driver was taken into custody, Bean attempted to arrest James. She locked the door and refused to get out of the car. When Bean tried to reach through an open window to unlock the door, James climbed from the back seat into the front seat and turned on the ignition. All three officers ran toward the driver's door. McCollister arrived first. As he tried to pull James out, he leaned into the car, putting most of his body weight inside.

James struggled. McCollister attempted to subdue her with pepper spray, but either the cannister malfunctioned or he did not find the trigger. He then tried to gain control of her with a "hair hold," but that tactic failed because James was wearing a wig-like hair weave that came off in McCollister's hand. At that point, James shifted the car into gear and started to drive away. Because of his position halfway inside the car, McCollister believed that, unless he could ***123** stop the car, he would fall out and be either dragged or run over. He unholstered his gun and ordered James to turn off the ignition. When James did not comply, McCollister then shot her one time. McCollister then fell out of the car unhurt. When the car stopped a few yards away, the officers removed James, laid her on the pavement, and handcuffed her. She died shortly thereafter.

An internal **Portland** Police Bureau investigation of McCollister ensued, resulting in the imposition of a disciplinary sanction: 900 hours unpaid leave. After the city disclosed the contents of the letter from then Chief of Police Mark Kroeker to McCollister informing him

of the sanction, the **Oregonian** Publishing Company (the *Oregonian*), invoking the Oregon **Public Records Law**, ORS 192.410 to 192.505, formally requested that the City of **Portland** produce other documents related to the shooting. Specifically, the *Oregonian* requested “the documents that fill the gap between the criminal investigation and the disciplinary letter to McCollister.” The city refused, and the *Oregonian* exercised its statutory right to obtain review by the Multnomah County District Attorney. ORS 192.450–192.460. District Attorney Schrunk issued a letter ordering the city to produce the requested records with a few specified redactions. The city then filed this action in Multnomah County Circuit Court, *id.*, seeking a declaration that the city was not required to disclose the documents. Both parties moved for summary judgment. The court granted the *Oregonian's* and denied the city's. The city appeals.

[1] Under ORS 192.420(1), “Every person has a right to inspect any public record of a public body in this state, except as otherwise expressly provided by ORS 192.501 **459 to 192.505.” The city argues that it need not disclose the documents at issue in this case because of the exemption in ORS 192.502(1):

“Communications within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to any final agency determination of policy or action. This exemption shall not apply unless the public body shows *124 that in the particular instance the public interest in encouraging frank communication between officials and employees of public bodies clearly outweighs the public interest in disclosure.”¹

When a public body withholds **public records** from disclosure, that body carries the burden of sustaining that action on appeal. ORS 192.490(1); *Kluge v. Oregon State Bar*, 172 Or.App. 452, 455, 19 P.3d 938 (2001). Therefore, the city has the burden in this case.

[2] [3] That burden is daunting. Oregon has a “strong and enduring policy that **public records** and governmental activities be open to the public,” *Jordan v. MVD*, 308 Or. 433, 438, 781 P.2d 1203 (1989), a policy embodied in a statutory presumption that documents will be disclosed to the public. ORS 192.420. Exemptions from disclosure are to be narrowly construed. *Oregonian Publishing v. Portland School Dist. No. II*, 144 Or.App. 180, 184, 925 P.2d 591 (1996), *aff'd on other grounds*, 329 Or. 393, 987 P.2d 480 (1999). Further,

the exemption at issue in this case does not impose an evenly weighted balancing test; the city must prove that the public interest in nondisclosure “clearly” outweighs the interest in disclosure.

The city relies primarily on the affidavit of the **Portland** Chief of Police, Derrick Foxworth,² in which he makes the following argument:

*125 “I strongly believe that in order to encourage greater candor and critical self-evaluation, Bureau members need to feel comfortable that honest, candid assessments will be used solely to improve the performance of a particular employee (through disciplinary action should that be necessary) or to assist in improving the performance of the Bureau as a whole. In my opinion, public disclosure of records of the type at issue in this case would have a chilling effect on the free flow of frank, uninhibited advice and self-critical observations within the Bureau.”

In addition, Foxworth's affidavit cites a report by the Police Assessment Resource Commission (PARC) concluding that there was anecdotal evidence that Bureau members were “hesitant to be critical” in after action reports and that “[p]eople are afraid to ask hard questions. People are afraid to hurt feelings.”

Although we do not disagree that most people may be more willing to make candid statements when they know the statements will remain confidential, we are unpersuaded that, in this case, the benefits of confidentiality clearly outweigh the benefits of disclosure. First, we observe generally that, although people may be more candid when they know that their statements will not be disclosed to the public and, in particular, to the people about whom the statements are made, they are also more likely to be vindictive, careless, or speculation—and therefore unreliable.

Second, and more importantly, like the district attorney and the trial court, we have **460 reviewed the requested documents *in camera* and find that they contain nothing that could cause a chilling effect of such magnitude as to outweigh the benefit to be reaped by allowing the public to determine whether a full, frank, and thorough investigation of this highly inflammatory and widely reported incident occurred. Because our decision in this case may not be the last word, we will not moot the potential for a meaningful Supreme Court review by disclosing the contents of the documents. We can, however, describe them generally.

They consist of three items: an “after action memorandum” from Officer McCollister’s supervisor, Commander Bret Smith, addressed to then Assistant Chief Foxworth; *126 a “confidential memorandum” from the “Review Level Committee” containing recommendations to Chief Kroeker; and logs kept by the Review Level Committee reflecting how each member voted on questions relating to whether McCollister violated Police Bureau procedures and what his sanction should be. We describe each in turn.

Smith, Commander of the North Precinct, submitted a lengthy after action memorandum to Foxworth. It includes an overview of the goals of police missions and the procedures used to complete them; a step-by-step analysis of the James shooting incident; and a frank assessment including his opinions and perspectives on what occurred and what should have occurred. A section entitled “Physical Evidence,” in which the evidence from the scene, particularly the gun powder patterns, is assessed in comparison to witness statements, is included as an attachment to the memorandum. Also attached is a set of diagrams illustrating the officers’ positions during the traffic stop and applicable general orders and statutes.

The Review Level Committee (Foxworth, Assistant Chief Lynnae Berg, Assistant Chief Andrew Kirkland, and Commander Bret Smith) submitted a confidential memorandum to Chief Kroeker. It is two pages long; most of the second page was ordered redacted and the *Oregonian* does not contest that decision. The remaining material identifies in general terms some procedures and policies “identified * * * for internal review and action.” It does not mention any officers or incidents by name.

After the full review of the incident, each of the four members of the Review Level Committee voted on whether he or she believed that McCollister or the other officers had conducted themselves according to bureau policies and procedures and

on what they thought was the appropriate level of discipline. The *Oregonian* requests disclosure of the voting logs that pertain to McCollister.

None of these documents contains material the disclosure of which would have a seriously chilling effect on future investigations, particularly in light of the fact that the description of events, the findings, and the discipline imposed were already disclosed before the *Oregonian* made its *127 request. No otherwise anonymous whistle blower is identified; no personal criticism (as opposed to findings regarding which actions fell outside of bureau policies) is leveled. Supervisory personnel render judgments, but they are clinical and detached. To conclude that public disclosure of such judgments, made pursuant to supervisory duties, would discourage future candor is an insult to the supervisors themselves.

The city argues that the need for confidentiality in the present case is weightier than normal: “[I]t is particularly in ‘high profile’ cases that recognizing [the exemption in ORS 192.502(1)] will do the *most* good in encouraging * * * self-critical investigation and analysis[.]” (Emphasis in original.). That may be. It is beyond dispute, however, that the public’s (and the police bureau’s) need to have complete confidence that a thorough and unbiased inquiry has occurred is most urgent and compelling in “high profile” cases where a police officer has killed a citizen in the line of duty. That confidence comes from transparency and its value is not outweighed by the speculation that transparency **461 will quell candor at some future date. This is not a close case.³

Affirmed.

Parallel Citations

112 P.3d 457, 33 Media L. Rep. 2115

Footnotes

* Edmonds, J., *vice* Cenicerros, S.J.

1 In its petition to the district attorney and in its complaint in circuit court, the city also claimed exemptions under ORS 192.501(12) and ORS 181.854. The former exempts “[a] personnel discipline action, or materials or documents supporting that action” unless the public interest requires disclosure in the particular instance. The latter prohibits disclosure of “information about a personnel investigation of a public safety employee * * * if the investigation does not result in discipline of the employee.” In its counterclaim in circuit court, the *Oregonian* sought disclosure of the requested documents and it renewed that request in its motion for summary judgment without reference to particular statutes. On appeal, the city assigns error only to the trial court’s conclusion “that the City failed to demonstrate that, under ORS 192.502(1), in this instance, the public interest in encouraging frank communication * * *

outweighs the public interest in disclosure of the records sought by *Oregonian*.” Therefore, this appeal raises no issue regarding ORS 192.501(12) or ORS 181.854.

- 2 At the time of the incident and investigation, Foxworth was Assistant Chief of Police. He was a participant in the review of McCollister and his voting log is one of the documents the *Oregonian* wants the city to disclose.
- 3 Although the city states in the first paragraph of its brief (“Nature of the proceeding and the relief sought”) that it “seeks reversal of the trial court's order granting *Oregonian's* petition for costs and attorney fees pursuant to ORS 192.490(1),” the brief contains neither an assignment of error nor any argument regarding costs and fees. We therefore leave the trial court's award undisturbed.

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City of Portland v. Anderson

Court of Appeals of Oregon. | October 27, 1999 | 163 Or.App. 550 | 988 P.2d 402

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163 Or.App. 550
Court of Appeals of Oregon.

CITY OF PORTLAND, a
municipal corporation, Appellant,

v.

David ANDERSON and The
Oregonian, Respondents.

(99711-09411; CA A101699) | Argued and
Submitted Nov. 30, 1998. | Decided Oct. 27, 1999.

Newspaper made request under Oregon **public records** statute to have county district attorney to direct city police bureau to disclose records relating to investigation and discipline of police captain. After request was granted, city police bureau petitioned for reversal of decision. The Circuit Court, Multnomah County, Ann Fisher, J. Pro Tem., granted summary judgment to newspaper. City police bureau appealed, and the Court of Appeals, Brewer, J., held that: (1) records relating to allegations for which captain was actually disciplined were records of a personal discipline action and potentially exempt from disclosure; but (2) public interest required disclosure of those records notwithstanding exception; and (3) records were not exempt from disclosure under personal interest exception.

Affirmed.

Deits, C.J., concurred and filed opinion.

Attorneys and Law Firms

****403 *551** Frank Hudson, Deputy City Attorney, argued the cause for appellant. With him on the briefs was Jeffrey L. Rogers, City Attorney.

Charles F. Hinkle, Portland, argued the cause for respondents. With him on the brief were David E. Van't Hof and Stoel Rives LLP.

Before LANDAU, Presiding Judge, and DEITS, Chief Judge, and BREWER, * Judge.

Opinion

***552** BREWER, J.

Plaintiff, City of **Portland**, appeals from summary judgment in favor of defendants David Anderson and *The Oregonian* in an action in which plaintiff sought to prevent disclosure of **public records**. Plaintiff assigns error to the trial court's grant of defendant's motion for summary judgment and its denial of plaintiff's motion for summary judgment. We affirm.

In reviewing the trial court's grant of summary judgment, we determine whether there is a genuine issue of material fact and whether the moving party is entitled to judgment as a matter of law. *Jones v. General Motors Corp.*, 325 Or. 404, 408-15, 939 P.2d 608 (1997). We state the facts in the light most favorable to the party opposing the motion, in this case plaintiff. *Double Eagle Golf, Inc. v. City of Portland*, 322 Or. 604, 606, 910 P.2d 1104 (1996).

Defendants sought to review documents pertaining to a disciplinary investigation and action that the Portland Police Bureau (the Bureau) took against Captain John Michael Garvey. Allegations against Garvey included conducting private business on police time, improper use of police telephones, improper use of a police office, and off-duty use of an escort service allegedly involving prostitution. The grand jury returned a not-true bill regarding the prostitution allegations. Garvey was eventually disciplined only for his off-duty involvement with the escort service.

In November 1997, after running several articles detailing the allegations, defendants ****404** requested that the Multnomah County District Attorney direct plaintiff to disclose the records of the investigation and discipline pursuant to ORS 192.490(1). The district attorney did so, and plaintiff petitioned the Multnomah County Circuit Court to reverse that decision. The court granted summary judgment for defendants and ordered plaintiff to disclose the transcripts of Garvey's interviews, an analysis of the allegations and determination of whether they were sustained, a summary the city relied upon to dispose of the matter, a letter to Garvey from the police chief outlining the sanctions imposed, a grievance ***553** Garvey filed against the Bureau, and a letter describing modified sanctions.

On appeal, plaintiff argues that the trial court erred, because the records were exempt from disclosure under the "personnel discipline actions" and "information of a personal nature" exceptions to the **public records** law. ORS 192.501(12); ORS 192.502(2). We address each claim of exemption in turn.

[1] [2] The general rule in Oregon with respect to public records favors disclosure. ORS 192.420 (“Every person has a right to inspect any public record of a public body in this state, except as otherwise expressly provided * * *.”); *MacEwan v. Holm et al.*, 226 Or. 27, 48, 359 P.2d 413 (1961) (records should be “subject to inspection unless there are circumstances justifying nondisclosure”). However, “[t]he agency initially and the courts ultimately * * * determine” whether disclosure is required if an exemption applies. *Jordan v. MVD*, 308 Or. 433, 440, 781 P.2d 1203 (1989).

[3] [4] [5] We first determine whether the requested material constitutes “personnel discipline” records within the meaning of ORS 192.501(12), which exempts from disclosure records of “[a] personnel discipline action, or materials or documents supporting that action.” Plaintiff bears the burden of showing that the records fit into the exemption, which is to be narrowly construed. *Oregonian Publishing v. Portland School Dist. No. 1J*, 144 Or.App. 180, 184, 925 P.2d 591 (1996), *adhered to as mod.* 152 Or.App. 135, 952 P.2d 66 (1998), *aff’d. on other grounds* 329 Or. 393, 987 P.2d 480 (1999). The Oregon Supreme Court has determined that “personnel discipline” does not refer to “the entire process from the initial question or complaint through a final conclusion.” *City of Portland v. Rice*, 308 Or. 118, 122, 775 P.2d 1371 (1989). Instead, it means “the completed process and the sanction of discipline imposed upon a public employee.” *Id.* at 123, 775 P.2d 1371. Here, the records contain limited investigatory material about several allegations, not all of which resulted in a sanction. Those records that do not relate to conduct that resulted in disciplinary sanctions do not qualify for exemption.¹ *Id.* at 124, 775 P.2d 1371 (no exemption for police *554 bureau investigatory records “which did not result in any disciplinary sanction”). However, all of the documents relating to allegations for which the Bureau actually disciplined Garvey do fall within the ORS 192.501(12) exemption.

[6] Nevertheless, the exemption does not apply if the “public interest requires disclosure in the particular instance.” ORS 192.501. Because the records of allegations ultimately resulting in discipline fall into an exempt category, defendants must demonstrate that disclosure is in the public interest. Plaintiff urges us to shield from disclosure the materials pertaining to the off-duty allegations, because the conduct involved was “non-criminal”—a conclusion it apparently draws from the fact that the grand jury declined to indict Garvey on prostitution charges, as well as from the

fact that patronizing an escort service is not *per se* illegal. We decline to do so.

Garvey is a high ranking police officer. The public has a legitimate interest in confirming his integrity and his ability to enforce **405 the law evenhandedly. The police investigation that resulted in discipline concluded that Garvey had engaged in sexual conduct through an escort service that may serve as a front for prostitution. That information bears materially on his integrity and on the risk that its compromise could affect the administration of his duties. We conclude that the public interest compels disclosure and that ORS 192.501(12) does not apply to this case.²

[7] Plaintiff next argues that the trial court erred in not withholding the records under ORS 192.502(2), which exempts from disclosure

*555 “[i]nformation of a personal nature such as but not limited to that kept in a personal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance.”

The personal interest exemption

“requires answers to three questions—whether the information is of a personal nature, whether disclosure unreasonably invades privacy, and whether the public interest nonetheless requires disclosure. The first and second questions must be answered affirmatively as a threshold matter in order to make relevant the remaining question * * *.” *Jordan*, 308 Or. at 440, 781 P.2d 1203.

The party seeking disclosure bears the burden of proof by a preponderance of the evidence on the first two questions. *Guard Publishing Co. v. Lane County School Dist.*, 310 Or. 32, 38, 791 P.2d 854 (1990). If the answer to both questions is “yes,” the party seeking disclosure must show, by clear and convincing evidence, that the public interest nonetheless demands disclosure. *Id.*

[8] Plaintiff first argues that the records pertaining to Garvey's off-duty sexual conduct are personal in nature. The statutory term, “information of a personal nature” has an ordinary, generic meaning. *Jordan*, 308 Or. at 441, 781 P.2d 1203. In *Jordan*, the Supreme Court embraced the following dictionary definitions:

“Webster’s Third New International Dictionary, at 1686 (Unabridged 1971), defines ‘personal’ as meaning ‘1: of or relating to a particular person: affecting one individual or each of many individuals: peculiar or proper to private concerns: not public or general * * * (personal baggage): * * * 6: exclusively for a given individual (a personal letter) * * *.’” *Id.* (Emphasis in original.)

The court held that a vehicle owner’s address in the Motor Vehicle Division’s records constituted information of a personal nature. In spite of the fact that the information was contained in a public record containing over two million such entries, the court nonetheless concluded that MVD could determine that it was of a personal nature because it was *556 information specific to one individual. The court also held that the first question under ORS 192.502(2) does not focus on whether the information should be protected as private; rather, we merely inquire whether the records sought fall within the “generic definition” of personal information. *Id.*

[9] As we have already observed, the records in this case, although relating to a specific individual, also have a bearing on his qualification to serve in a position of public trust. The tension between individually specific information and its reflection on matters of public concern is also present in the dictionary definition of the word “personal” endorsed by the court in *Jordan*. On the one hand, “personal” means “relating” to a particular person. On the other hand, “personal” means “peculiar or proper to private concerns: not public or general.” Although the disputed records in this case pertain specifically to Garvey, they do not affect him exclusively **406 and are not peculiar to his private concerns. We therefore conclude that they do not constitute information of a personal nature.

[10] However, even if the records sought did constitute personal information, their disclosure would not unreasonably invade individual privacy. The implications of Garvey’s conduct transcend his claim to privacy. By imposing a disciplinary penalty against him for that conduct, plaintiff has already determined that Garvey’s conduct is relevant to his position in the **Portland** Police Bureau. In that respect, this case shares significant factual elements with *Oregonian Publishing*.³ There, the personal information exemption was held inapplicable to a personnel investigation into alleged employee theft and misuse of school property, because disclosure did not unreasonably invade the employees’ privacy. 144 Or.App. at 187-88, 925 P.2d 591⁴ No criminal

charges were filed and the *557 employees were disciplined internally. *Id.* at 182, 925 P.2d 591. Although the court’s decision did not disclose whether the misconduct occurred on or off duty, that factual distinction alone does not dictate whether disclosure would constitute an unreasonable invasion of privacy. Here, as in *Oregonian Publishing*, the conduct involved directly bears on the possible compromise of a public official’s integrity in the context of his public employment. Therefore, any invasion of privacy that would result from disclosure is not unreasonable. For each of the foregoing reasons, the exemption provided by ORS 192.502(2) is inapplicable to this case.

The trial court did not err in granting defendants’ motion for summary judgment and in denying plaintiff’s motion for summary judgment. Defendants were entitled to judgment as a matter of law.

Affirmed.

DEITS, C.J., concurring.

I agree with the majority’s holding, and I agree with its conclusion that the public interest in disclosure of the personnel discipline records in this case takes them out of the exemption provided by ORS 192.501(12). Specifically, I concur in the majority’s view that the public has a legitimate interest in the integrity of a police officer of Captain Garvey’s rank and that the matters involved in the disciplinary action bear on that interest.

I write this concurrence to emphasize a point that the majority touches on obliquely but does not spell out. Plaintiff’s argument concerning the absence of the requisite public interest in the off-duty activities in question might be well taken if it were not for the public significance of Garvey’s position. Although not an elected official, Garvey has assumed a high-ranking law enforcement position that requires a substantial level of public confidence and trust. Given the nature of Garvey’s governmental role, I join the majority in concluding that the situation here bridges the gap—barely—between public notoriety or curiosity about the off-duty activities of a government employee and the kind of “public interest” that the statute contemplates.

Parallel Citations

988 P.2d 402

Footnotes

* Brewer, J., *vice* Warden, S.J.

1 Plaintiff asserts in its opening brief that it has released all documents ordered disclosed except those related to the off-duty sexual conduct for which Garvey was disciplined. However, defendants correctly point out that the records ordered disclosed are not limited to those relating to the off-duty sexual conduct. Defendants contend they have no way of knowing what information is contained in the records reviewed *in camera* by the trial court and that it ordered disclosed.

2 This case is before us on cross-motions for summary judgment. In its opening brief, plaintiff asserts that there are no genuine issues of material fact. Plaintiff then contends in its reply brief that there is an issue of material fact: namely, whether Garvey engaged in "serious or criminal misconduct." The serious nature and implications of the allegations, together with the fact that they resulted in discipline, are decisive in this case. The outcome does not depend on whether Garvey actually engaged in "serious or criminal mischief." Therefore, there is no genuine issue of *material* fact in dispute.

3 The Supreme Court affirmed our decision in *Oregonian Publishing*, reasoning that the content of the records involved a generalized investigation into employee theft, not individual personnel, and therefore the personnel file exemptions of ORS 342.850(8) and ORS 192.502(9) did not apply. 329 Or. at 398, 987 P.2d 480. The court did not reach the ORS 192.502(2) or ORS 192.501(12) exemptions. Because the Supreme Court's analysis in *Oregonian Publishing* did not call our analysis of those exemptions in that case into question, we adhere to that reasoning. *See, e.g., McLean v. Buck Medical Services, Inc.*, 157 Or.App. 563, 576, 971 P.2d 462 (1998), *rev. allowed* 328 Or. 594, 987 P.2d 514 (1999).

4 We also concluded that the records did not constitute information of a personal nature. *Oregonian Publishing*, 144 Or.App. at 188, 925 P.2d 591.

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MOODY'S

INVESTORS SERVICE

New Issue: Moody's assigns A2 rating to City of Lebanon Full Faith and Credit Obligations, Series 2013

Global Credit Research - 08 Jul 2013

A1 rating on city's GOULT affirmed

LEBANON (CITY OF) OR
Cities (including Towns, Villages and Townships)
OR

Moody's Rating

ISSUE	RATING
Full Faith and Credit and Refunding Obligations, Series 2013	A2
Sale Amount	\$13,605,000
Expected Sale Date	07/16/13
Rating Description	General Obligation Limited Tax

Moody's Outlook NOO

Opinion

NEW YORK, July 08, 2013 --Moody's Investors Service has assigned an A2 rating to the City of Lebanon, Oregon's, Full Faith and Credit and Refunding Obligations, Series 2013. At this time, Moody's affirms the city's A1 rating on previously issued General Obligation Bonds outstanding in the amount of \$16.6 million. The current offering is secured by the full faith and credit of the city within the constitutional and statutory limitations of non-voter approved debt, and is not subject to appropriation. A portion of bond proceeds will be used to reimburse Lowe's Companies Inc. (A3 senior unsecured rating with stable outlook) as a part of a 2005 agreement when the corporation located its distribution center within the city's Northwest Urban Renewal District (URD) with the expectation the city would reimburse the corporation for various water and transportation infrastructure construction costs. A smaller portion will be used to refund a portion of the city's previously issued debt for savings.

SUMMARY RATINGS RATIONALE

The A2 rating reflects the city's modest but growing tax base, somewhat below average wealth indices, adequate financial operations and a manageable debt profile. Importantly, it is expected that the URD will adequately cover a large portion of annual debt service for the Series 2013 bonds such that the city's general fund will not need to provide support that would materially reduce its operating flexibility; the remaining portion of the 2013 bonds are expected to be repaid from the city's water and wastewater systems.

STRENGTHS

- Modestly-sized tax base is larger than many similarly rated cities nationally
- Satisfactory financial operations and stable general fund reserve levels

CHALLENGES

- City leverages full faith and credit pledge, with some notable offset from city-owned utilities
- Continued unevenness in taxable values
- Above average debt burden

DETAILED CREDIT DISCUSSION

SMALL CITY LOCATED IN WEST-CENTRAL OREGON; ONGOING AND PLANNED COMMERCIAL DEVELOPMENT EXPECTED TO BUTRESS TAX BASE GROWTH

The small 5.6 square mile City of Lebanon is located in west-central Oregon about 45 miles north of the city of Eugene in Linn County. The city's largest employers are somewhat diverse, anchored by the local school district and a large Lowe's Distribution Center followed by various other entities. Between 2000 and 2010 the city's population increased nearly 20% and since then grew a modest 1% to an estimated 15,660 residents. The city comprises only about 13% of the county's population. As a proxy, the county's unemployment rate is typically higher than the state and nation; as of April 2013 the county unemployment rate continued to improve and was 9.8% but still above the state (7.8%) and nation (7.1%).

In 2010, the city's real market valuation (RMV) peaked at \$1.22 billion in 2010, a healthy 12% increase from the prior year. Since then, changes in real market value were uneven as reflected in a sizeable decline of nearly 13% in 2011 followed by a slight increase (3%) in 2012. The RMV declined slightly (2.5%) in 2013 to \$1.07 billion but remains above the national median for A1 rated cities. The ten largest property taxpayers comprise a somewhat concentrated 27.2% of 2012 AV. The largest taxpayer, Lowes Home Improvement represents 11% (\$84.7 million of AV). The city tentatively projects a modest increase of between 1 - 2% for 2014 followed by a gradual increase over the medium term supported by numerous residential, commercial and mixed use construction projects that are in various stages of completion. Importantly, the district's assessed valuation (AV) continues to realize stable annual growth despite recent declines in RMV, which is supported by the state's Measure 50 provisions allowing AV for properties across most classes to grow by up to 3.0% annually as long as respective AV remains below RMV, plus adjustments for improvements and new development.

In March 2013, Lowe's appealed the county's assessed valuation (AV) and has requested a valuation at about \$44 million, nearly half of the current estimate. The case is likely to be heard in state tax court in the fall of 2013. Regardless of the precise valuation outcome, the city is confident there will be no impact to the general fund and tax increment revenues generated within the URD under all scenarios will be sufficient to cover a large portion of annual debt service for the current issuance with the remainder paid from net revenues of the city's water and wastewater systems.

Socioeconomic indices for the city are below average relative to its ratings peer group. City per capita and median family incomes in the 2010 census were 69.4% and 74.2% of national levels, respectively. Real market value per capita (2013) is also below average at \$68,283.

SOUND FISCAL OPERATIONS; ADEQUATE RESERVE LEVELS

Over the past several years, the city has demonstrated a trend of relatively stable reserve levels although at somewhat below average levels compared to A1 rated cities nationally. Between fiscal 2008 and fiscal 2011 the total general fund balance stayed relatively even and averaged 17% of general fund revenues (\$1 million). The total general fund balance dipped slightly in fiscal 2012 due to a small operating deficit and equaled 14.3% of revenues (\$1.2 million). General fund reserves included a contingency reserve equal to 10.2% of operating revenues (\$0.64 million) which is slightly above the city's 10% target. In addition, the city notes a modest amount of reserves were available to the general fund within the capital projects fund (approximately \$275,000) providing some additional financial flexibility. In fiscal 2012 the city made an internal change to how personnel and administrative costs were charged to various funds, which resulted in the lower general fund balance as a percentage of revenues. For fiscal 2013 the city noted balanced operations continued and estimates fiscal year-end results will reflect a slight increase to the contingency reserve equaling an estimated 10.6% of revenues (\$0.76 million).

For the current fiscal year (2014) the city's general fund budget increased nearly 14% although the large increase is primarily due to the city's decision to move various engineering costs into the general fund. Also, the city has budgeted for generally flat revenues compared to the prior year and mitigated the slow growth in revenues through various expenditure adjustments including a reduction in five full-time employees through a realignment of management positions and lowered materials and services costs. The city's contingency reserves is budgeted to decline very slightly although on a percentage basis will decline to 9.3% of revenues which is just below the city's internal target. The city also estimates additional reserves available to the general fund within the capital projects fund are budgeted at roughly \$260,000 which again provides the city with a modest amount of additional financial flexibility.

For the city, property tax revenue losses due to compression peaked in fiscal 2012 (\$0.4 million) and since then

have been modest in fiscal 2012 (\$40,000) and fiscal 2013 (\$100,000) as higher tax rates are required to generate revenues amid a declining tax base. Under the state's Measure 5 provisions, local governments are able to levy property taxes up to a combined overlapping rate of \$10 per \$1,000 of RMV for general government purposes and another \$5 per \$1,000 of RMV for school-related purposes. When overlapping tax rates surpass these limits, local option levies are compressed or fully displaced and followed proportionally by reducing tax rates for permanent operating levies and the urban renewal special levy to bring the overall tax rate to within limitations. Levies for voter-approved general obligation bonds are exempt from compression.

We view the city's reserves as somewhat low relative to A1 rated cities nationally. However, we also note these low levels are mitigated in part due to a large portion of general fund revenues are generated from stable and predictable property taxes governed by Measure 50. However, we will continue to monitor the city's ability to improve reserves.

ABOVE AVERAGE DEBT BURDEN; LIMITED FUTURE BORROWING

Moody's expects the city's debt levels will remain above average but manageable given expected tax base growth and limited near-term borrowing. The city's current direct and overall debt burdens are above average compared to similarly-rated Oregon cities at 3.1% and 5.5%, respectively. Although the debt service for this loan is projected to come largely from the URD with a small portion coming from the city's water and wastewater systems, the loan is payable from the city's General Fund and is a full faith and credit obligation of the city. In the event the city was required to service the debt from the general fund the general fund burden would be a substantial gross 23% of fiscal 2012 general fund revenues. Current city projections appear reasonable and indicate tax increment revenues and enterprise net revenues will be sufficient to service the debt. Future debt plans include enterprise related borrowing for the city water and wastewater systems and current estimates indicate between \$12 to \$15 million in borrowing sometime in the next two years.

WHAT WOULD MAKE THE RATING GO - UP

- Substantial increase of the city's tax base
- Increase and sustained improvement in general fund reserves

WHAT WOULD MAKE THE RATING GO - DOWN

- Deterioration in general fund reserves
- Reliance on the city's general fund to pay debt service related to the Northwest Urban Renewal District
- Sustained declines in tax base

KEY STATISTICS

2013 Full value: \$1.07 billion

2013 Estimated population: 15,660

Average annual growth in full value, 2008 to 2013: -0.6%

2013 Full value per capita: \$68,283

2010 Per capita income: 69.4% of US

2010 Median family income: 74.2% of US

Direct debt burden: 3.1%

Overall debt burden: 5.5%

Payout of principal (10 years): 58.5%

FY 2012 General Fund balance: \$1.17 million (13.5% of general fund revenues)

The principal methodology used in this rating was General Obligation Bonds Issued by US Local Governments published in April 2013. Please see the Credit Policy page on www.moody.com for a copy of this methodology.

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City of Portland v. Oregonian Pub. Co.

Court of Appeals of Oregon. | June 1, 2005 | 200 Or.App. 120 | 112 P.3d 457

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Outline


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200 Or.App. 120

Court of Appeals of Oregon.

CITY OF PORTLAND, an Oregon
municipal corporation, Appellant,

v.

OREGONIAN PUBLISHING
COMPANY, Respondent.

0310-11712; A124262. | Argued and
Submitted Feb. 1, 2005. | Decided June 1, 2005.

Synopsis

Background: After being ordered by county district attorney to produce certain documents relevant to the investigation and discipline of a police officer who shot and killed a civilian during a traffic stop, city filed an action seeking a declaration that it was not required to disclose the documents. The Circuit Court, Multnomah County, Michael C. Zusman, Judge Pro Tempore, affirmed the district attorney's order. City appealed.

[Holding:] The Court of Appeals, Schuman, J., held that the requested documents were not exempt from disclosure under the Oregon **Public Records Law**.

Affirmed.

Attorneys and Law Firms

****457 *120** Harry Auerbach, City of Portland City Attorney, argued the cause for appellant. On the brief was Tracy Pool Reeve, Portland.

****458** Charles F. Hinkle, Portland, argued the cause and filed the brief for respondent.

Before WOLLHEIM, Presiding Judge, and EDMONDS *
and SCHUMAN, Judges.

Opinion

***122** SCHUMAN, J.

The Circuit Court of Multnomah County, affirming an order of the county's district attorney, ordered the City of Portland to produce certain documents relevant to the investigation and discipline of a police officer who killed a civilian during a

traffic stop. The city argues that the benefit flowing to the public from nondisclosure—namely, that public employees will be more likely to evaluate their supervisors, subordinates, and colleagues with candor if they know the evaluation will not be made public—clearly outweighs the benefit flowing to the public from disclosure itself. ORS 192.502(1). We disagree with the city, and therefore we affirm.

The following facts were included in material that has already been disclosed to the public, and they are not disputed in this appeal. On May 5, 2003, Portland Police Officer Bean made a traffic stop of a car carrying a driver and two passengers. One passenger, Kendra James, was riding in the back seat. When Bean discovered that the driver could not produce a license and that both passengers had outstanding arrest warrants, he decided to take all three occupants into custody. Officer McCollister, the police officer whose disciplinary investigation generated the documents at issue in this case, and another officer answered Bean's call for assistance. After the driver was taken into custody, Bean attempted to arrest James. She locked the door and refused to get out of the car. When Bean tried to reach through an open window to unlock the door, James climbed from the back seat into the front seat and turned on the ignition. All three officers ran toward the driver's door. McCollister arrived first. As he tried to pull James out, he leaned into the car, putting most of his body weight inside.

James struggled. McCollister attempted to subdue her with pepper spray, but either the cannister malfunctioned or he did not find the trigger. He then tried to gain control of her with a "hair hold," but that tactic failed because James was wearing a wig-like hair weave that came off in McCollister's hand. At that point, James shifted the car into gear and started to drive away. Because of his position halfway inside the car, McCollister believed that, unless he could ***123** stop the car, he would fall out and be either dragged or run over. He unholstered his gun and ordered James to turn off the ignition. When James did not comply, McCollister then shot her one time. McCollister then fell out of the car unhurt. When the car stopped a few yards away, the officers removed James, laid her on the pavement, and handcuffed her. She died shortly thereafter.

An internal **Portland** Police Bureau investigation of McCollister ensued, resulting in the imposition of a disciplinary sanction: 900 hours unpaid leave. After the city disclosed the contents of the letter from then Chief of Police Mark Kroecker to McCollister informing him

of the sanction, the **Oregonian** Publishing Company (the **Oregonian**), invoking the Oregon **Public Records** Law, ORS 192.410 to 192.505, formally requested that the City of **Portland** produce other documents related to the shooting. Specifically, the **Oregonian** requested “the documents that fill the gap between the criminal investigation and the disciplinary letter to McCollister.” The city refused, and the **Oregonian** exercised its statutory right to obtain review by the Multnomah County District Attorney. ORS 192.450–192.460. District Attorney Schrunk issued a letter ordering the city to produce the requested records with a few specified redactions. The city then filed this action in Multnomah County Circuit Court, *id.*, seeking a declaration that the city was not required to disclose the documents. Both parties moved for summary judgment. The court granted the **Oregonian's** and denied the city's. The city appeals.

[1] Under ORS 192.420(1), “Every person has a right to inspect any public record of a public body in this state, except as otherwise expressly provided by ORS 192.501 ****459** to 192.505.” The city argues that it need not disclose the documents at issue in this case because of the exemption in ORS 192.502(1):

“Communications within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to any final agency determination of policy or action. This exemption shall not apply unless the public body shows ***124** that in the particular instance the public interest in encouraging frank communication between officials and employees of public bodies clearly outweighs the public interest in disclosure.”¹

When a public body withholds **public records** from disclosure, that body carries the burden of sustaining that action on appeal. ORS 192.490(1); *Kluge v. Oregon State Bar*, 172 Or.App. 452, 455, 19 P.3d 938 (2001). Therefore, the city has the burden in this case.

[2] [3] That burden is daunting. Oregon has a “strong and enduring policy that **public records** and governmental activities be open to the public,” *Jordan v. MVD*, 308 Or. 433, 438, 781 P.2d 1203 (1989), a policy embodied in a statutory presumption that documents will be disclosed to the public. ORS 192.420. Exemptions from disclosure are to be narrowly construed. *Oregonian Publishing v. Portland School Dist. No. 1J*, 144 Or.App. 180, 184, 925 P.2d 591 (1996), *aff'd on other grounds*, 329 Or. 393, 987 P.2d 480 (1999). Further,

the exemption at issue in this case does not impose an evenly weighted balancing test; the city must prove that the public interest in nondisclosure “clearly” outweighs the interest in disclosure.

The city relies primarily on the affidavit of the **Portland** Chief of Police, Derrick Foxworth,² in which he makes the following argument:

***125** “I strongly believe that in order to encourage greater candor and critical self-evaluation, Bureau members need to feel comfortable that honest, candid assessments will be used solely to improve the performance of a particular employee (through disciplinary action should that be necessary) or to assist in improving the performance of the Bureau as a whole. In my opinion, public disclosure of records of the type at issue in this case would have a chilling effect on the free flow of frank, uninhibited advice and self-critical observations within the Bureau.”

In addition, Foxworth's affidavit cites a report by the Police Assessment Resource Commission (PARC) concluding that there was anecdotal evidence that Bureau members were “hesitant to be critical” in after action reports and that “[p]eople are afraid to ask hard questions. People are afraid to hurt feelings.”

Although we do not disagree that most people may be more willing to make candid statements when they know the statements will remain confidential, we are unpersuaded that, in this case, the benefits of confidentiality clearly outweigh the benefits of disclosure. First, we observe generally that, although people may be more candid when they know that their statements will not be disclosed to the public and, in particular, to the people about whom the statements are made, they are also more likely to be vindictive, careless, or speculation—and therefore unreliable.

Second, and more importantly, like the district attorney and the trial court, we have ****460** reviewed the requested documents *in camera* and find that they contain nothing that could cause a chilling effect of such magnitude as to outweigh the benefit to be reaped by allowing the public to determine whether a full, frank, and thorough investigation of this highly inflammatory and widely reported incident occurred. Because our decision in this case may not be the last word, we will not moot the potential for a meaningful Supreme Court review by disclosing the contents of the documents. We can, however, describe them generally.

They consist of three items: an “after action memorandum” from Officer McCollister’s supervisor, Commander Bret Smith, addressed to then Assistant Chief Foxworth; *126 a “confidential memorandum” from the “Review Level Committee” containing recommendations to Chief Kroeker; and logs kept by the Review Level Committee reflecting how each member voted on questions relating to whether McCollister violated Police Bureau procedures and what his sanction should be. We describe each in turn.

Smith, Commander of the North Precinct, submitted a lengthy after action memorandum to Foxworth. It includes an overview of the goals of police missions and the procedures used to complete them; a step-by-step analysis of the James shooting incident; and a frank assessment including his opinions and perspectives on what occurred and what should have occurred. A section entitled “Physical Evidence,” in which the evidence from the scene, particularly the gun powder patterns, is assessed in comparison to witness statements, is included as an attachment to the memorandum. Also attached is a set of diagrams illustrating the officers’ positions during the traffic stop and applicable general orders and statutes.

The Review Level Committee (Foxworth, Assistant Chief Lynnae Berg, Assistant Chief Andrew Kirkland, and Commander Bret Smith) submitted a confidential memorandum to Chief Kroeker. It is two pages long; most of the second page was ordered redacted and the *Oregonian* does not contest that decision. The remaining material identifies in general terms some procedures and policies “identified * * * for internal review and action.” It does not mention any officers or incidents by name.

After the full review of the incident, each of the four members of the Review Level Committee voted on whether he or she believed that McCollister or the other officers had conducted themselves according to bureau policies and procedures and

on what they thought was the appropriate level of discipline. The *Oregonian* requests disclosure of the voting logs that pertain to McCollister.

None of these documents contains material the disclosure of which would have a seriously chilling effect on future investigations, particularly in light of the fact that the description of events, the findings, and the discipline imposed were already disclosed before the *Oregonian* made its *127 request. No otherwise anonymous whistle blower is identified; no personal criticism (as opposed to findings regarding which actions fell outside of bureau policies) is leveled. Supervisory personnel render judgments, but they are clinical and detached. To conclude that public disclosure of such judgments, made pursuant to supervisory duties, would discourage future candor is an insult to the supervisors themselves.

The city argues that the need for confidentiality in the present case is weightier than normal: “[I]t is particularly in ‘high profile’ cases that recognizing [the exemption in ORS 192.502(1)] will do the *most* good in encouraging * * * self-critical investigation and analysis[.]” (Emphasis in original.). That may be. It is beyond dispute, however, that the public’s (and the police bureau’s) need to have complete confidence that a thorough and unbiased inquiry has occurred is most urgent and compelling in “high profile” cases where a police officer has killed a citizen in the line of duty. That confidence comes from transparency and its value is not outweighed by the speculation that transparency **461 will quell candor at some future date. This is not a close case.³

Affirmed.

Parallel Citations

112 P.3d 457, 33 Media L. Rep. 2115

Footnotes

* Edmonds, J., *vice* Cenicerros, S.J.

1 In its petition to the district attorney and in its complaint in circuit court, the city also claimed exemptions under ORS 192.501(12) and ORS 181.854. The former exempts “[a] personnel discipline action, or materials or documents supporting that action” unless the public interest requires disclosure in the particular instance. The latter prohibits disclosure of “information about a personnel investigation of a public safety employee * * * if the investigation does not result in discipline of the employee.” In its counterclaim in circuit court, the *Oregonian* sought disclosure of the requested documents and it renewed that request in its motion for summary judgment without reference to particular statutes. On appeal, the city assigns error only to the trial court’s conclusion “that the City failed to demonstrate that, under ORS 192.502(1), in this instance, the public interest in encouraging frank communication * * *

outweighs the public interest in disclosure of the records sought by *Oregonian*.” Therefore, this appeal raises no issue regarding ORS 192.501(12) or ORS 181.854.

- 2 At the time of the incident and investigation, Foxworth was Assistant Chief of Police. He was a participant in the review of McCollister and his voting log is one of the documents the *Oregonian* wants the city to disclose.
- 3 Although the city states in the first paragraph of its brief (“Nature of the proceeding and the relief sought”) that it “seeks reversal of the trial court’s order granting *Oregonian’s* petition for costs and attorney fees pursuant to ORS 192.490(1),” the brief contains neither an assignment of error nor any argument regarding costs and fees. We therefore leave the trial court’s award undisturbed.

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City of Portland v. Anderson

Court of Appeals of Oregon. | October 27, 1999 | 163 Or.App. 550 | 988 P.2d 402


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163 Or.App. 550
Court of Appeals of Oregon.

CITY OF PORTLAND, a
municipal corporation, Appellant,

v.

David ANDERSON and The
Oregonian, Respondents.

(99711-09411; CA A101699) | Argued and
Submitted Nov. 30, 1998. | Decided Oct. 27, 1999.

Newspaper made request under Oregon **public records** statute to have county district attorney to direct city police bureau to disclose records relating to investigation and discipline of police captain. After request was granted, city police bureau petitioned for reversal of decision. The Circuit Court, Multnomah County, Ann Fisher, J. Pro Tem., granted summary judgment to newspaper. City police bureau appealed, and the Court of Appeals, Brewer, J., held that: (1) records relating to allegations for which captain was actually disciplined were records of a personal discipline action and potentially exempt from disclosure; but (2) public interest required disclosure of those records notwithstanding exception; and (3) records were not exempt from disclosure under personal interest exception.

Affirmed.

Deits, C.J., concurred and filed opinion.

Attorneys and Law Firms

****403 *551** Frank Hudson, Deputy City Attorney, argued the cause for appellant. With him on the briefs was Jeffrey L. Rogers, City Attorney.

Charles F. Hinkle, Portland, argued the cause for respondents. With him on the brief were David E. Van't Hof and Stoel Rives LLP.

Before LANDAU, Presiding Judge, and DEITS, Chief Judge, and BREWER, * Judge.

Opinion

***552** BREWER, J.

Plaintiff, City of **Portland**, appeals from summary judgment in favor of defendants David Anderson and *The Oregonian* in an action in which plaintiff sought to prevent disclosure of **public records**. Plaintiff assigns error to the trial court's grant of defendant's motion for summary judgment and its denial of plaintiff's motion for summary judgment. We affirm.

In reviewing the trial court's grant of summary judgment, we determine whether there is a genuine issue of material fact and whether the moving party is entitled to judgment as a matter of law. *Jones v. General Motors Corp.*, 325 Or. 404, 408-15, 939 P.2d 608 (1997). We state the facts in the light most favorable to the party opposing the motion, in this case plaintiff. *Double Eagle Golf, Inc. v. City of Portland*, 322 Or. 604, 606, 910 P.2d 1104 (1996).

Defendants sought to review documents pertaining to a disciplinary investigation and action that the Portland Police Bureau (the Bureau) took against Captain John Michael Garvey. Allegations against Garvey included conducting private business on police time, improper use of police telephones, improper use of a police office, and off-duty use of an escort service allegedly involving prostitution. The grand jury returned a not-true bill regarding the prostitution allegations. Garvey was eventually disciplined only for his off-duty involvement with the escort service.

In November 1997, after running several articles detailing the allegations, defendants ****404** requested that the Multnomah County District Attorney direct plaintiff to disclose the records of the investigation and discipline pursuant to ORS 192.490(1). The district attorney did so, and plaintiff petitioned the Multnomah County Circuit Court to reverse that decision. The court granted summary judgment for defendants and ordered plaintiff to disclose the transcripts of Garvey's interviews, an analysis of the allegations and determination of whether they were sustained, a summary the city relied upon to dispose of the matter, a letter to Garvey from the police chief outlining the sanctions imposed, a grievance ***553** Garvey filed against the Bureau, and a letter describing modified sanctions.

On appeal, plaintiff argues that the trial court erred, because the records were exempt from disclosure under the "personnel discipline actions" and "information of a personal nature" exceptions to the **public records** law. ORS 192.501(12); ORS 192.502(2). We address each claim of exemption in turn.

[1] [2] The general rule in Oregon with respect to public records favors disclosure. ORS 192.420 (“Every person has a right to inspect any public record of a public body in this state, except as otherwise expressly provided * * *.”); *MacEwan v. Holm et al.*, 226 Or. 27, 48, 359 P.2d 413 (1961) (records should be “subject to inspection unless there are circumstances justifying nondisclosure”). However, “[t]he agency initially and the courts ultimately * * * determine” whether disclosure is required if an exemption applies. *Jordan v. MVD*, 308 Or. 433, 440, 781 P.2d 1203 (1989).

[3] [4] [5] We first determine whether the requested material constitutes “personnel discipline” records within the meaning of ORS 192.501(12), which exempts from disclosure records of “[a] personnel discipline action, or materials or documents supporting that action.” Plaintiff bears the burden of showing that the records fit into the exemption, which is to be narrowly construed. *Oregonian Publishing v. Portland School Dist. No. 1J*, 144 Or.App. 180, 184, 925 P.2d 591 (1996), *adhered to as mod.* 152 Or.App. 135, 952 P.2d 66 (1998), *aff’d. on other grounds* 329 Or. 393, 987 P.2d 480 (1999). The Oregon Supreme Court has determined that “personnel discipline” does not refer to “the entire process from the initial question or complaint through a final conclusion.” *City of Portland v. Rice*, 308 Or. 118, 122, 775 P.2d 1371 (1989). Instead, it means “the completed process and the sanction of discipline imposed upon a public employee.” *Id.* at 123, 775 P.2d 1371. Here, the records contain limited investigatory material about several allegations, not all of which resulted in a sanction. Those records that do not relate to conduct that resulted in disciplinary sanctions do not qualify for exemption.¹ *Id.* at 124, 775 P.2d 1371 (no exemption for police *554 bureau investigatory records “which did not result in any disciplinary sanction”). However, all of the documents relating to allegations for which the Bureau actually disciplined Garvey do fall within the ORS 192.501(12) exemption.

[6] Nevertheless, the exemption does not apply if the “public interest requires disclosure in the particular instance.” ORS 192.501. Because the records of allegations ultimately resulting in discipline fall into an exempt category, defendants must demonstrate that disclosure is in the public interest. Plaintiff urges us to shield from disclosure the materials pertaining to the off-duty allegations, because the conduct involved was “non-criminal”—a conclusion it apparently draws from the fact that the grand jury declined to indict Garvey on prostitution charges, as well as from the

fact that patronizing an escort service is not *per se* illegal. We decline to do so.

Garvey is a high ranking police officer. The public has a legitimate interest in confirming his integrity and his ability to enforce **405 the law evenhandedly. The police investigation that resulted in discipline concluded that Garvey had engaged in sexual conduct through an escort service that may serve as a front for prostitution. That information bears materially on his integrity and on the risk that its compromise could affect the administration of his duties. We conclude that the public interest compels disclosure and that ORS 192.501(12) does not apply to this case.²

[7] Plaintiff next argues that the trial court erred in not withholding the records under ORS 192.502(2), which exempts from disclosure

*555 “[i]nformation of a personal nature such as but not limited to that kept in a personal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance.”

The personal interest exemption

“requires answers to three questions—whether the information is of a personal nature, whether disclosure unreasonably invades privacy, and whether the public interest nonetheless requires disclosure. The first and second questions must be answered affirmatively as a threshold matter in order to make relevant the remaining question * * *.” *Jordan*, 308 Or. at 440, 781 P.2d 1203.

The party seeking disclosure bears the burden of proof by a preponderance of the evidence on the first two questions. *Guard Publishing Co. v. Lane County School Dist.*, 310 Or. 32, 38, 791 P.2d 854 (1990). If the answer to both questions is “yes,” the party seeking disclosure must show, by clear and convincing evidence, that the public interest nonetheless demands disclosure. *Id.*

[8] Plaintiff first argues that the records pertaining to Garvey's off-duty sexual conduct are personal in nature. The statutory term, “information of a personal nature” has an ordinary, generic meaning. *Jordan*, 308 Or. at 441, 781 P.2d 1203. In *Jordan*, the Supreme Court embraced the following dictionary definitions:

MOODY'S

INVESTORS SERVICE

New Issue: Moody's assigns A2 rating to City of Lebanon Full Faith and Credit Obligations, Series 2013

Global Credit Research - 08 Jul 2013

A1 rating on city's GOULT affirmed

LEBANON (CITY OF) OR
Cities (including Towns, Villages and Townships)
OR

Moody's Rating

ISSUE	RATING
Full Faith and Credit and Refunding Obligations, Series 2013	A2
Sale Amount	\$13,605,000
Expected Sale Date	07/16/13
Rating Description	General Obligation Limited Tax

Moody's Outlook NOO

Opinion

NEW YORK, July 08, 2013 --Moody's Investors Service has assigned an A2 rating to the City of Lebanon, Oregon's, Full Faith and Credit and Refunding Obligations, Series 2013. At this time, Moody's affirms the city's A1 rating on previously issued General Obligation Bonds outstanding in the amount of \$16.6 million. The current offering is secured by the full faith and credit of the city within the constitutional and statutory limitations of non-voter approved debt, and is not subject to appropriation. A portion of bond proceeds will be used to reimburse Lowe's Companies Inc. (A3 senior unsecured rating with stable outlook) as a part of a 2005 agreement when the corporation located its distribution center within the city's Northwest Urban Renewal District (URD) with the expectation the city would reimburse the corporation for various water and transportation infrastructure construction costs. A smaller portion will be used to refund a portion of the city's previously issued debt for savings.

SUMMARY RATINGS RATIONALE

The A2 rating reflects the city's modest but growing tax base, somewhat below average wealth indices, adequate financial operations and a manageable debt profile. Importantly, it is expected that the URD will adequately cover a large portion of annual debt service for the Series 2013 bonds such that the city's general fund will not need to provide support that would materially reduce its operating flexibility; the remaining portion of the 2013 bonds are expected to be repaid from the city's water and wastewater systems.

STRENGTHS

- Modestly-sized tax base is larger than many similarly rated cities nationally
- Satisfactory financial operations and stable general fund reserve levels

CHALLENGES

- City leverages full faith and credit pledge, with some notable offset from city-owned utilities
- Continued unevenness in taxable values
- Above average debt burden

DETAILED CREDIT DISCUSSION

SMALL CITY LOCATED IN WEST-CENTRAL OREGON; ONGOING AND PLANNED COMMERCIAL DEVELOPMENT EXPECTED TO BUTRESS TAX BASE GROWTH

The small 5.6 square mile City of Lebanon is located in west-central Oregon about 45 miles north of the city of Eugene in Linn County. The city's largest employers are somewhat diverse, anchored by the local school district and a large Lowe's Distribution Center followed by various other entities. Between 2000 and 2010 the city's population increased nearly 20% and since then grew a modest 1% to an estimated 15,660 residents. The city comprises only about 13% of the county's population. As a proxy, the county's unemployment rate is typically higher than the state and nation; as of April 2013 the county unemployment rate continued to improve and was 9.8% but still above the state (7.8%) and nation (7.1%).

In 2010, the city's real market valuation (RMV) peaked at \$1.22 billion in 2010, a healthy 12% increase from the prior year. Since then, changes in real market value were uneven as reflected in a sizeable decline of nearly 13% in 2011 followed by a slight increase (3%) in 2012. The RMV declined slightly (2.5%) in 2013 to \$1.07 billion but remains above the national median for A1 rated cities. The ten largest property taxpayers comprise a somewhat concentrated 27.2% of 2012 AV. The largest taxpayer, Lowes Home Improvement represents 11% (\$84.7 million of AV). The city tentatively projects a modest increase of between 1 - 2% for 2014 followed by a gradual increase over the medium term supported by numerous residential, commercial and mixed use construction projects that are in various stages of completion. Importantly, the district's assessed valuation (AV) continues to realize stable annual growth despite recent declines in RMV, which is supported by the state's Measure 50 provisions allowing AV for properties across most classes to grow by up to 3.0% annually as long as respective AV remains below RMV, plus adjustments for improvements and new development.

In March 2013, Lowe's appealed the county's assessed valuation (AV) and has requested a valuation at about \$44 million, nearly half of the current estimate. The case is likely to be heard in state tax court in the fall of 2013. Regardless of the precise valuation outcome, the city is confident there will be no impact to the general fund and tax increment revenues generated within the URD under all scenarios will be sufficient to cover a large portion of annual debt service for the current issuance with the remainder paid from net revenues of the city's water and wastewater systems.

Socioeconomic indices for the city are below average relative to its ratings peer group. City per capita and median family incomes in the 2010 census were 69.4% and 74.2% of national levels, respectively. Real market value per capita (2013) is also below average at \$68,283.

SOUND FISCAL OPERATIONS; ADEQUATE RESERVE LEVELS

Over the past several years, the city has demonstrated a trend of relatively stable reserve levels although at somewhat below average levels compared to A1 rated cities nationally. Between fiscal 2008 and fiscal 2011 the total general fund balance stayed relatively even and averaged 17% of general fund revenues (\$1 million). The total general fund balance dipped slightly in fiscal 2012 due to a small operating deficit and equaled 14.3% of revenues (\$1.2 million). General fund reserves included a contingency reserve equal to 10.2% of operating revenues (\$0.64 million) which is slightly above the city's 10% target. In addition, the city notes a modest amount of reserves were available to the general fund within the capital projects fund (approximately \$275,000) providing some additional financial flexibility. In fiscal 2012 the city made an internal change to how personnel and administrative costs were charged to various funds, which resulted in the lower general fund balance as a percentage of revenues. For fiscal 2013 the city noted balanced operations continued and estimates fiscal year-end results will reflect a slight increase to the contingency reserve equaling an estimated 10.6% of revenues (\$0.76 million).

For the current fiscal year (2014) the city's general fund budget increased nearly 14% although the large increase is primarily due to the city's decision to move various engineering costs into the general fund. Also, the city has budgeted for generally flat revenues compared to the prior year and mitigated the slow growth in revenues through various expenditure adjustments including a reduction in five full-time employees through a realignment of management positions and lowered materials and services costs. The city's contingency reserves is budgeted to decline very slightly although on a percentage basis will decline to 9.3% of revenues which is just below the city's internal target. The city also estimates additional reserves available to the general fund within the capital projects fund are budgeted at roughly \$260,000 which again provides the city with a modest amount of additional financial flexibility.

For the city, property tax revenue losses due to compression peaked in fiscal 2012 (\$0.4 million) and since then

have been modest in fiscal 2012 (\$40,000) and fiscal 2013 (\$100,000) as higher tax rates are required to generate revenues amid a declining tax base. Under the state's Measure 5 provisions, local governments are able to levy property taxes up to a combined overlapping rate of \$10 per \$1,000 of RMV for general government purposes and another \$5 per \$1,000 of RMV for school-related purposes. When overlapping tax rates surpass these limits, local option levies are compressed or fully displaced and followed proportionally by reducing tax rates for permanent operating levies and the urban renewal special levy to bring the overall tax rate to within limitations. Levies for voter-approved general obligation bonds are exempt from compression.

We view the city's reserves as somewhat low relative to A1 rated cities nationally. However, we also note these low levels are mitigated in part due to a large portion of general fund revenues are generated from stable and predictable property taxes governed by Measure 50. However, we will continue to monitor the city's ability to improve reserves.

ABOVE AVERAGE DEBT BURDEN; LIMITED FUTURE BORROWING

Moody's expects the city's debt levels will remain above average but manageable given expected tax base growth and limited near-term borrowing. The city's current direct and overall debt burdens are above average compared to similarly-rated Oregon cities at 3.1% and 5.5%, respectively. Although the debt service for this loan is projected to come largely from the URD with a small portion coming from the city's water and wastewater systems, the loan is payable from the city's General Fund and is a full faith and credit obligation of the city. In the event the city was required to service the debt from the general fund the general fund burden would be a substantial gross 23% of fiscal 2012 general fund revenues. Current city projections appear reasonable and indicate tax increment revenues and enterprise net revenues will be sufficient to service the debt. Future debt plans include enterprise related borrowing for the city water and wastewater systems and current estimates indicate between \$12 to \$15 million in borrowing sometime in the next two years.

WHAT WOULD MAKE THE RATING GO - UP

- Substantial increase of the city's tax base
- Increase and sustained improvement in general fund reserves

WHAT WOULD MAKE THE RATING GO - DOWN

- Deterioration in general fund reserves
- Reliance on the city's general fund to pay debt service related to the Northwest Urban Renewal District
- Sustained declines in tax base

KEY STATISTICS

2013 Full value: \$1.07 billion

2013 Estimated population: 15,660

Average annual growth in full value, 2008 to 2013: -0.6%

2013 Full value per capita: \$68,283

2010 Per capita income: 69.4% of US

2010 Median family income: 74.2% of US

Direct debt burden: 3.1%

Overall debt burden: 5.5%

Payout of principal (10 years): 58.5%

FY 2012 General Fund balance: \$1.17 million (13.5% of general fund revenues)

The principal methodology used in this rating was General Obligation Bonds Issued by US Local Governments published in April 2013. Please see the Credit Policy page on www.moodys.com for a copy of this methodology.

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“Webster's Third New International Dictionary, at 1686 (Unabridged 1971), defines ‘personal’ as meaning ‘1: of or relating to a particular person: affecting one individual or each of many individuals: peculiar or proper to private concerns: not public or general * * * (personal baggage): * * * 6: exclusively for a given individual (a personal letter) * * *.’” *Id.* (Emphasis in original.)

The court held that a vehicle owner's address in the Motor Vehicle Division's records constituted information of a personal nature. In spite of the fact that the information was contained in a public record containing over two million such entries, the court nonetheless concluded that MVD could determine that it was of a personal nature because it was *556 information specific to one individual. The court also held that the first question under ORS 192.502(2) does not focus on whether the information should be protected as private; rather, we merely inquire whether the records sought fall within the “generic definition” of personal information. *Id.*

[9] As we have already observed, the records in this case, although relating to a specific individual, also have a bearing on his qualification to serve in a position of public trust. The tension between individually specific information and its reflection on matters of public concern is also present in the dictionary definition of the word “personal” endorsed by the court in *Jordan*. On the one hand, “personal” means “relating” to a particular person. On the other hand, “personal” means “peculiar or proper to private concerns: not public or general.” Although the disputed records in this case pertain specifically to Garvey, they do not affect him exclusively **406 and are not peculiar to his private concerns. We therefore conclude that they do not constitute information of a personal nature.

[10] However, even if the records sought did constitute personal information, their disclosure would not unreasonably invade individual privacy. The implications of Garvey's conduct transcend his claim to privacy. By imposing a disciplinary penalty against him for that conduct, plaintiff has already determined that Garvey's conduct is relevant to his position in the **Portland** Police Bureau. In that respect, this case shares significant factual elements with *Oregonian Publishing*.³ There, the personal information exemption was held inapplicable to a personnel investigation into alleged employee theft and misuse of school property, because disclosure did not unreasonably invade the employees' privacy. 144 Or.App. at 187-88, 925 P.2d 591⁴ No criminal

charges were filed and the *557 employees were disciplined internally. *Id.* at 182, 925 P.2d 591. Although the court's decision did not disclose whether the misconduct occurred on or off duty, that factual distinction alone does not dictate whether disclosure would constitute an unreasonable invasion of privacy. Here, as in *Oregonian Publishing*, the conduct involved directly bears on the possible compromise of a public official's integrity in the context of his public employment. Therefore, any invasion of privacy that would result from disclosure is not unreasonable. For each of the foregoing reasons, the exemption provided by ORS 192.502(2) is inapplicable to this case.

The trial court did not err in granting defendants' motion for summary judgment and in denying plaintiff's motion for summary judgment. Defendants were entitled to judgment as a matter of law.

Affirmed.

DEITS, C.J., concurring.

I agree with the majority's holding, and I agree with its conclusion that the public interest in disclosure of the personnel discipline records in this case takes them out of the exemption provided by ORS 192.501(12). Specifically, I concur in the majority's view that the public has a legitimate interest in the integrity of a police officer of Captain Garvey's rank and that the matters involved in the disciplinary action bear on that interest.

I write this concurrence to emphasize a point that the majority touches on obliquely but does not spell out. Plaintiff's argument concerning the absence of the requisite public interest in the off-duty activities in question might be well taken if it were not for the public significance of Garvey's position. Although not an elected official, Garvey has assumed a high-ranking law enforcement position that requires a substantial level of public confidence and trust. Given the nature of Garvey's governmental role, I join the majority in concluding that the situation here bridges the gap—barely—between public notoriety or curiosity about the off-duty activities of a government employee and the kind of “public interest” that the statute contemplates.

Parallel Citations

988 P.2d 402

Footnotes

* Brewer, J., *vice* Warden, S.J.

1 Plaintiff asserts in its opening brief that it has released all documents ordered disclosed except those related to the off-duty sexual conduct for which Garvey was disciplined. However, defendants correctly point out that the records ordered disclosed are not limited to those relating to the off-duty sexual conduct. Defendants contend they have no way of knowing what information is contained in the records reviewed *in camera* by the trial court and that it ordered disclosed.

2 This case is before us on cross-motions for summary judgment. In its opening brief, plaintiff asserts that there are no genuine issues of material fact. Plaintiff then contends in its reply brief that there is an issue of material fact: namely, whether Garvey engaged in "serious or criminal misconduct." The serious nature and implications of the allegations, together with the fact that they resulted in discipline, are decisive in this case. The outcome does not depend on whether Garvey actually engaged in "serious or criminal mischief." Therefore, there is no genuine issue of *material fact* in dispute.

3 The Supreme Court affirmed our decision in *Oregonian Publishing*, reasoning that the content of the records involved a generalized investigation into employee theft, not individual personnel, and therefore the personnel file exemptions of ORS 342.850(8) and ORS 192.502(9) did not apply. 329 Or. at 398, 987 P.2d 480. The court did not reach the ORS 192.502(2) or ORS 192.501(12) exemptions. Because the Supreme Court's analysis in *Oregonian Publishing* did not call our analysis of those exemptions in that case into question, we adhere to that reasoning. *See, e.g., McLean v. Buck Medical Services, Inc.*, 157 Or.App. 563, 576, 971 P.2d 462 (1998), *rev. allowed* 328 Or. 594, 987 P.2d 514 (1999).

4 We also concluded that the records did not constitute information of a personal nature. *Oregonian Publishing*, 144 Or.App. at 188, 925 P.2d 591.

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