

A regular meeting of the Astoria Common Council was held at the above place at the hour of 7:00 pm.

Councilors Present: Brownson, Rocka, Herman, Hilton, and Mayor Jones.

Councilors Excused: None

Staff Present: City Manager Estes, Parks and Recreation Director Dart-Mclean, Community Development Director Leatherman, Contract Planner Johnson, Finance Director Brooks, Fire Chief Crutchfield, Police Chief Spalding, Public Works Director Harrington, Library Director Pearson, and City Attorney Henningsgaard. The meeting was live streamed and recorded, and will be transcribed by ABC Transcription Services, LLC.

PRESENTATIONS

Item 3(a): Sexual Assault Awareness Month

Mayor Jones read the proclamation declaring April 2021 as Sexual Assault Awareness Month.

REPORTS OF COUNCILORS

Item 4(a): Councilor Hilton thanked the Clatsop County Health Department and the volunteers at the fairgrounds and Seaside High School for doing a great job giving vaccines. He attended an East Astoria Uppertown Business Association meeting where the future of the neighborhood was discussed.

Item 4(b): Councilor Herman reported that she attended the groundbreaking ceremony for the new Astoria branch of the Wauna Federal Credit Union at 5th and Marine. The bank is supposed to open in October and she was excited to see their new building.

Item 4(c): Councilor Brownson reported that the most recent City Council work session was about the library. He also reported that the Development Commission had been discussing the Astor West Urban Renewal Area. More money would be coming to the City to improve services. He received his second Moderna vaccination at Seaside High School and he appreciated the volunteers for being so efficient. He reported there were 12 new COVID-19 infections in the county today. He encouraged everyone to continue wearing masks, social distancing, and get vaccinated. Lastly, he reported the Budget Committee meetings would begin next week.

Item 4(d): Councilor Rocka reported that County and volunteers had done a great job on the vaccinations. He attended the Wauna groundbreaking and said he was glad they were building a new facility in Astoria. He learned that Charter Spectrum no longer had an office in town and had moved to Warrenton. The Uniontown Association was working on a Memorial Day commemoration at the Fisherman's Memorial. He recently hosted one of their planning meetings. He also attended sessions by Portland State University on communicating science, health, and risk. Communication must be done carefully since there is so much misinformation and political division. He believed people should learn as much as possible about communicating clearly.

Item 4(e): Mayor Jones reported there were two upcoming ribbon cuttings, one at Astoria Bait and Tackle on April 29th, and on at Ash River Woodworking on April 30th. It was great to see that more businesses opened during the pandemic than closed.

CHANGES TO AGENDA

No changes.

CONSENT CALENDAR

The following items were presented on the Consent Calendar:

- 6(a) Uniontown Marine Memorial Committee Meeting Minutes of March 16, 2021
- 6(b) Astoria Public Library Advisory Board Meeting Minutes of April 6, 2021
- 6(c) Liquor License Application from Panaree Corporation, doing business as SEA Crab House, located at 1 12th Street for a Full On-Premises Commercial Sales License
- 6(d) Consideration of Oregon Department of Transportation Flexible Services Agreement

City Council Action: Motion made by Councilor Herman, seconded by Councilor Hilton, to approve the Consent Calendar. Motion carried unanimously. Ayes: Councilors Brownson, Herman, Rocka, Hilton, and Mayor Jones; Nays: None.

REGULAR AGENDA ITEMS

Item 7(a): LUBA Remand of Appeal (AP20-02) by Hollander Hospitality of the Administrative Denial of the Extension Requests for Design Review Permit (DR18-01R) as Appealed (AP18-03) and Historic New Construction Permit (NC18-01) as Appealed (18-04) to Construct a four-story hotel at 1 2nd Street

This matter comes before the City Council on remand from the Oregon Land Use Board of Appeals (LUBA). Based on LUBA's Final Opinion and Order, the City Council should hold a public hearing and conduct what LUBA described as a "narrow economic conditions analysis" and determine whether the exception described in ADC 9.100.B.2.d allows for an extension in this case. It is recommended that the City Council hold a public hearing, determine whether economic conditions justify the applicant's failure to proceed with the project, make a tentative decision on the Permit Extension Request, and direct staff to prepare findings for consideration and adoption at its May 3, 2021 City Council meeting.

Director Leatherman said the public comments were separated into two groups in Exhibits 15 and 16 based on LUBA's direction. Exhibit 18 was received late, but had already been submitted to City Council.

Planner Johnson presented the written Staff report via Power Point regarding the decision before Council.

Mayor Jones confirmed there were no questions for Staff and opened the public hearing at 7:22 pm. He asked if anyone objected to the jurisdiction of the City Council to hear this matter at this time. There were no objections. He asked if any member of the City Council had any conflicts of interest or ex parte contacts to declare. There were none. Mayor Jones explained the procedures governing the conduct of public hearings to the audience and advised that handouts of the substantive review criteria were available from Staff. He called for the Appellant's testimony.

Steve Holtberg, Attorney for the Applicant: Before I get into my comments, I wanted a clarification from Staff regarding materials submitted to the record. We have not been informed of any additional materials, and I would like to get an idea of what's been submitted.

City Manager Estes: Mr. Holtberg, it's your materials.

Mr. Holtberg: Thank you. In terms of our presentation, I will first address some of the legal issues involved with the remand hearing, and Mark Hollander will address some of the practical and economic aspects of the project. We think there's really one question before the City Council, and that is has the Applicant demonstrated that poor economic conditions exist in the market, which would advise against proceeding with the project? We think that LUBA's decision couldn't be more clear. The sole issue on remand is for the City to address Hollander's evidence of economic conditions. As our earlier letter indicated, we don't believe that it is appropriate for the City to reopen the record and we maintain that objection. But, it looks like the City has gone ahead and done that. With respect to the Staff report, the primary problem with the City's position here is that it requires Hollander to explain why it didn't move forward prior to the pandemic. LUBA expressly rejected this approach. And, there is nothing in the Code or LUBA's remand order that permits the City to take into account the Applicant's progress or lack thereof, and that's the language from the Staff report. Again, the question is simply, do economic conditions exist which make it impractical to move forward, which would advise against moving forward? Related to this, the City cannot consider what happened or what did not happen during the

15-month period prior to the extension request. The extension request criteria merely ask, "Do conditions exist?" And, as Staff indicated in the Staff report, it's at the time of application. We believe that it's appropriate because the application is pending and is on appeal, that you consider it all the way through the appeal hearing, because we could submit additional evidence at that period of time. Regardless of the date you pick, nothing has changed. The economic conditions, and those relate specifically to new hotel construction financing because that is what we're talking about, those haven't changed. It is a dire outlook for new hotel construction. What we're asking the Council to do tonight is to follow the requirements of the Code, follow LUBA's decision, and find that the Applicant has in fact demonstrated that economic conditions would advise against proceeding. Your Code offers two options, the substantial progress prong and the economic conditions prong. And again, the problem with the Staff approach about considering the Applicant's progress or lack thereof of or considering how much progress other hotels made during that 15-month period, is that doesn't address the economic condition. That essentially penalizes the Applicant for moving for not moving forward quickly enough. And that's not what your Code says. The Code simply asks about the economic conditions at the time the request is made. Moreover, had the Applicant made progress and submitted permits and had geotech reports, that progress would entitle the Applicant to an extension under the other prong. That's why you can only look at economic conditions as they relate in this case to new hotel financing. And, as we stated in our first presentation to this Council back in August, is that where an Applicant can demonstrate that economic conditions exist, which make it unwise to proceed, they are entitled to a permanent extension. Prior to the first hearing, we submitted three letters and a summary of the hospitality performance over the last quarter. And for this hearing, we've supplemented the record with current data and the current information, which really hasn't changed, is that hotel construction financing is almost impossible to obtain. Hollander's long-standing partners have stated this. They've stated that they've just cut off construction lending for new hotels. That, the case back in the spring, and it's still the case now. And that, again, is really the crux of the issue. And, the question is not whether tourism in Astoria has increased. It has and that is great, but that's not the question. And, the question is not whether the economy is in the process of rebounding. That's not the question before the Council. The question is for a hotel to move forward, are the economic conditions right for that? And the answer is plainly no.

With respect to both the Bowline and the Home2 projects referenced in the Staff report, there is no evidence in the record that Bowline obtained its construction financing during the pandemic. And, from the timeline provided by Staff, it appears with almost certainty that they obtained financing prior to the onset of COVID. There is no evidence whatsoever about Home2 and whether it can proceed or whether it has construction financing. Again, these projects, if you have financing before a pandemic, you can keep that financing, but trying to get new financing during this pandemic has been an absolute impossibility.

In conclusion, and before I turn it over to Mark, we only ask that the Council follow the Code. We ask that you follow LUBA's remand order and focus on really the one issue that's before you, and has the Applicant demonstrated that economic conditions in the market advise against proceeding with the project? We don't see how based on this evidence, you can find any differently. And with that, we ask you to approve the request. Our last comment before I turn it over to Mark, and this is in response to the Staff presentation, I think we disagree with what you consider to be the one-year extension. Were you to grant an extension, we think it has to be tied to the date of issuance of the extension. We've eaten up now, what, almost a year of time based on the appeal and the remand to the City. And, I just don't think that period of time that you have identified in the Staff report is correct. And with that, I'm going to turn it over to Mark and I may have some concluding comments as well.

Mark Hollander, CEO, Hollander Hospitality: I only have two minutes, here, and I think Steve summarized everything quite well from the standpoint of hotel construction financing. I think I would add that lenders, they're not just focused on Astoria, they're focused on a region. Probably our go-to lender here could have been Bank of Pacific. We built a hotel with them. They have another hotel financed right now. They're based in Aberdeen. They have a branch in Astoria. I talked to them before COVID. They were very open to wanting to be involved. We're talking a big loan, a \$5 million to \$6 million loan. That's a big deal, but they think about this in a portfolio. And when something like this dramatic happens and this is so dramatic it's hard to put into words how dramatic it is in the hotel business. It's been nothing like this in 50 years. And so, when the bank says, 'Look, we're stopping construction lending,' you basically...you can't build. Pretty much all hotels are built with lending and are invested in with lending; a significant amount, anywhere from 50 percent to 75 percent is typical of the value of a particular project. So, I could spend a lot of time focusing on those other items of why I didn't start and so on, and you probably wouldn't want to hear all the reasons why, which in a sense could be potentially negative towards the City, but we're really focused on this particular issue, and that's the issue of construction lending, which can't be done. And, if I had another option, then I'd be looking at it. And in the

interest of time, since I only have 10 more seconds, I appreciate your time and wish this wasn't taking up this much time for both yourselves and me. Thank you.

Mayor Jones: Thank you. And, you do have five minutes for rebuttal at the end so you and Mr. Holtberg can share that time. At this point, we invite testimony by persons who would speak in favor of the appeal. If anyone wishes to speak in favor, you'll have three minutes. Please raise your hand.

Barbara Pender, W. Marine Dr., Astoria: I'm a property owner on West Marine Drive directly next door to Stephanie's Cabin, and it's very frustrating to have a place that's been vacant and overrun with the transient population leaving their messes in the parking lot, around the parking lot, sleeping there and having to be run off and sleeping under our property, dock, and coming out stealing a car from our dock, and stealing my bike, breaking a padlock and cutting my bike lock. The transient people around, it's problematic. And, development in the city going forward, it would be very preferential to have something nice. I have heard things around town, people that don't understand what's going on. And they say, 'Oh, he's the Marriott and he's got lots of money.' Well, he's not a Marriott. He is a hotel builder who pays Marriott to use their name. And, he's not building a Marriott Hotel; he's building a Fairfield Inn, which is a Marriott branch. It's attached to the Marriott name, but it doesn't have the Marriott name on the front door. And, people around here make comments and they don't even know what's going on and they don't understand it. And, I think that things aren't explained well and people don't understand how things need to happen. But development is always good in a town, and we need to control the transient population as best we can. The police are doing the best they can and they've helped us quite a bit. Thank you very much.

Christian Lint, 54 W. Marine Dr., Astoria: For the life of me, I can't imagine why anybody would reject Hollander's efforts to bring something to the city. I've been here for a few years and I'm pretty frustrated. I don't see anything happening on the area where we are other than what Barbara pointed out. I see crime happening down there, assaults, a lot of homeless. And for the life of me, why would anybody want to develop in the city? I don't see it. I bought a boat down here several years ago, the oldest yacht in the West Coast. It's been here for a year and I can't find a place to moor it. There is no development going on. There's no support here that I see that is positive. Hollander's bringing in, I think, an effort to upgrade that otherwise unused waterfront. Nobody wants any fishing down there. They don't want to do anything. So, I think to reject his plea for continuing this appeal without another substantial alternative would be purely ludicrous. So, that's my input.

Mayor Jones: Now, I would invite anyone who wishes to speak against the appeal, please use your Zoom function to raise your hand and you'll have three minutes.

Chris Farrar, 3023 Harrison Ave., Astoria: I'm encouraging a unanimous vote by the City Council to deny an extension of a building permit for this project. In a way, I kind of agree with a couple of those earlier speakers that are tired of looking at a mess down there at the building site; the lack of development there. And, I don't think our city should have to endure working with a developer who is incapable of getting funding for whatever reason. They have not made that clear, but they may just be a bad risk. I don't know. But certainly, they've had adequate time to get funding and to get going on the project. And, the reason there's a deadline on getting significant work done is so that towns don't have to sit there and look at incomplete projects, which may benefit the Hollander Hospitality Corporation, but it doesn't benefit our town. Our town does need development, and it needs it now. It needs it done well. It needs it done by competent people. And, this project has dragged on unnecessarily. The economic conditions, maybe they're kind of tough right now, but the future is unbelievably bright, and anybody that can't see that should just get out of business, because you don't belong there. You drag your feet on this because you're a big corporation, and you want to keep open options to do something else. Well, our city deserves better than that. And so, without getting any more hostile or angry over this, I'm going to just say to the City Council, I think you know what the sentiment is of residents in this town. If we're going to have development, we want it done in a timely way. We want decent construction done. We want it to help our economy, and this project is not doing any of those things. And, Mr. Hollander has been given adequate time. It's time to pull the permit and start over. Thank you very much.

Lisa Morley, 4908 Cedar St., Astoria: I have more of a question than anything. I am opposed to the construction. As I said, I'm a Marriott brand titanium lifetime member right now. At that status, I love my Marriott and Marriott brands. I'm not in favor of destroying any additional views in Astoria. They're getting so limited at this point. And I prefer local owned businesses within the city of Astoria; owners within the city of Astoria. But my bigger question is about the future public hearing. When is that and what service will that provide regardless of what

decision is made right now? What service will that provide to have an open public hearing and when would that be scheduled for?

Mayor Jones: So, this is the public hearing, Ms. Morley.

Ms. Morley: Oh, I heard at the beginning, I thought Ms. Johnson said there was going to be a future date for a public hearing.

Mayor Jones: Well, any findings of the Council tonight would be brought back at the next City Council meeting, but the public hearing is actually—you're actually part of the public hearing having just testified at it.

Ms. Morley: Well, great; that is my vote then, against putting the hotel where it is currently requested.

Mayor Jones: Thank you. Are there other persons who wish to speak against the appeal? Are there any persons who wish to speak impartially to the appeal? Okay, I see no other testimony. In that case, we'll return the mic to the Appellant for up to five minutes.

Mr. Holtberg: I'm going to offer a little bit of this time to—Mark, if you want to add a few more comments since I ate up most of your initial time. I'll be very brief in my conclusion and rebuttal. Mr. Farrar said the future is bright and I couldn't agree more. But that's, again, not the question before Council. The only evidence before Council is that the economic conditions related to hotel financing and construction are dire and that construction financing is not available. And as Mark testified before, he can't get a loan. And loans are necessary to proceed with hotel construction. There's just simply no way around that. And based on that evidence, we think there's only one conclusion, and that is the Applicant has met its burden and has demonstrated that economic conditions do not advise and did not advise against proceeding with the project.

Mr. Hollander: Okay. Thanks again. Because of limited time, I just, you know, this project has been difficult. I kind of expected to come into this town and when I first met with a lot of leaders, both business and public, I felt I was going in definitely the right direction. I'm unique because I have a special relationship with Marriott. They agreed that they wanted to look at this town with me. And so, they gave me the time and latitude to be able to do that. And, I know people want to [inaudible], but I've got an amazing reputation in the industry, both operationally from a development standpoint, from a lending standpoint; I've never been bankrupt. I'm not some greedy developer. I have a family. I'm just a conservative guy in a small town like yours. And I care about my community, too, but I care about these other communities, and I care about Astoria. The fact that I'm not living in Astoria shouldn't invalidate me and my ability to be able to come in to your town and make it better because I can make it better with new demand and a hotel, lots of jobs, and tax dollars. And so, in terms of slamming me about why I haven't started this project is not part of the debate tonight. But, there are some specific reasons from my standpoint as a developer. It's been tough to deal with not a clear path on how to develop within the waterfront area. And that's where there was just a lot of controversy in regard to even within your own Staff and trying to get an interpretation of what I could do. And then, after I finally get this thing approved, then you want to change the goalposts, and then you start carving out some other property owners, large property owners that are close to me, that could be potential competitors; so, as a developer, I have to take a pause. I have to think about let's let the smoke clear and see what the City's next move is in terms of changing the goalposts on the waterfront. So, there are reasonable reasons for me to take a pause. Do I have to explain all of those reasons? I don't think so. I think what I can do is a great job for this city. I think you're going to be proud of it. It's going to be an amazingly run hotel. People don't even talk about how well it's going to be run. That's what I do extremely well, and I have at least 20 years for Marriott. And so, my journey is just starting with a new hotel; it's decades that I'll be committed to for this particular property. And so, again, I can go on and on about reasons why things weren't [inaudible] but what's at hand is, right now, the argument that we're making is just related to financing. It's reasonable. And, it's just absolutely the situation. Bankers are regional and they're not making loans on new construction anywhere in the Pacific Northwest. That's just the way it is. It doesn't matter how well Astoria is doing right now in occupancy and ADR. I understand what that is. I agree the future is bright. That's why I still want to work to try to do something because I do think there is potential down the road. So, I think that's all I've got. So, I am passionate about wanting to do something in Astoria, and it's not all just about money. I do want to make this town better, and I want to basically lift the tide for all folks in Astoria, including hotels in Astoria.

Mayor Jones closed the public hearing at 7:50 pm and called for Council discussion and deliberation.

Councilor Brownson noted there is quite a bit of legal advice to the Council from Mr. Holtberg, both in writing and in person this evening. He asked if the City Attorney had any comments.

City Attorney Henningsgaard noted the Councilors had received his comments via email. The most curious aspect of this appeal is that this is the third opportunity the Applicants have had to demonstrate that Mr. Hollander was unable to get construction financing, and yet not one of his submissions actually states that. The Applicants have said financing was tough and suggested financing was unavailable to others. If Mr. Hollander did not have financing, he suspected that would have been the first thing presented to the City. Nevertheless, if the City Council is convinced that construction financing is not available to Mr. Hollander, or that the terms of the financing prevent him from economically constructing the hotel, that would be a justifiable reason for granting the extension. He is disappointed to hear people badmouth Mr. Hollander, who is a gentleman with a fine reputation, which is neither here nor there, but he should not be insulted as an Applicant. One of Mr. Holtberg's arguments is that the Applicant only needed to demonstrate that poor economic conditions exist. The Code actually requires more than that. It requires that poor economic conditions advise against proceeding with the project, and those things are tied together, but the economic conditions have to be the reason for not progressing with the project, in our reading, and, that's been what the difficulty is. The final submissions that were given for Mr. Hollander do make a stronger case that perhaps, financing might not be available to him. However, neither Bank of Pacific nor Heritage Bank has stated they reviewed Mr. Hollander's application and denied it. It seems curious that if Mr. Hollander got a denial letter and was unable to obtain financing, it would be a simple thing to establish.

Mayor Jones said he is curious about the word "may" in the context of the sentence that "permit extensions may be granted as provided by..." and then it lists the criteria, one of which is economic conditions. Based on the LUBA remand, was he to interpret that LUBA posits the word "may" the same way as the word "shall." It sounds like LUBA has said "permit extensions will be granted."

City Attorney Henningsgaard responded it is a little more difficult than that. Per Oregon law, discretion granted to a body must have certain parameters spelled out for it. The difficulty is that when permissive language like "may" is used in our statute, it describes no guidepost for the Council to consider when making a decision. Some case law has interpreted "may" by removing it from the statute to indicate that discretion no longer exists if the statute does not give some kind of description of how to exercise that discretion. It does not have to be particularly explicit, but it must give the Applicant some notion of how the discretion will be exercised. LUBA did not explain it that way, but he believed that was one of the City's arguments before LUBA; that Astoria's statute does not provide the groundwork or an explanation about how to exercise that discretion.

Mayor Jones said he would start off with comments about what Council heard tonight. He noted "poor economic conditions exist in the market that would advise against proceeding with the project" seemed different than if the language had read, "poor economic conditions exist in the market that advise against obtaining construction financing." The Appellant's argument is down to "economic conditions advise against obtaining hotel construction financing or advise against lenders providing hotel construction financing." But the language did not mention hotel construction financing. The City's language stated, "proceeding with the project" which would include the long list of things that the other two hotels had done; applying for various permits, grading, and other bureaucratic rule items that must be done before breaking ground. He did not see how the economic conditions that pertained in April 2020 would have prevented moving forward on items like obtaining permits, submitting paperwork, receiving approvals, and paying fees. Additionally, Mr. Henningsgaard just said that the economic conditions would have to be the reason for not proceeding with the project. However, at the very end of his final five minutes, Mr. Hollander stated that in the year after the original permit was granted, he took a pause. He said he was not sure where the City was going with the waterfront development; he saw the City was changing the Bridge Vista Overlay Zone, height requirements and lot sizes, so he took a pause. Mr. Hollander also just commented that he did not think he needed to explain all of his pauses to the Council. Mayor Jones took that to mean that the reason he took the pause and did not move forward with the project had nothing to do with the economic conditions. There were a variety of other things happening in the community that caused Mr. Hollander to pause moving forward on building the four-story hotel that had been permitted. And then, it just so happened that a pandemic occurred, which was kind of good timing to have a reason to ask for the extension. But, it's on the record; I heard Mr. Hollander say, and it's on the recording; he said he was frustrated with the City and what was happening and he took a pause. There were several things happening that caused him to take a pause. And, it seems that explained why nothing happened with moving the project forward for 15 months, not economic conditions.

Councilor Brownson responded that he would be a bit of a devil's advocate. He thought it was very interesting how all this has transpired. First, for the 15 months prior to their application for an extension, as far as Council is concerned, they saw nothing happening. For whatever reason Mr. Hollander chose not to proceed at that time is not part of the Council's purview. The Council is not investigating Mr. Hollander for his purpose for not starting. However, if he was pausing because the City was looking at changing the development codes around where he already had a permit to proceed with the existing codes, that would give Councilor Brownson a reason to get going on the project, because he would not be subjected to any new codes, so that was interesting, but also irrelevant. He had come down to something pretty simple. When Mr. Hollander and his associates made a choice, let's say in March 2020, there was nothing but uncertainty about the future impacts of the virus. Therefore, it is rational and conceivable that a businessperson would have to pause and take time to know how everything would play out so they would know what the environment would be like and what their options would be in the future. Not being able to get financing was one example of how the virus was impacting how business was done. For Councilor Brownson, it was more about the uncertainty about what would happen. If the pandemic had never happened, Mr. Hollander would still have had eight months to do substantive work. In eight months, Mr. Hollander could conceivable have gotten enough work done to qualify for an extension in November without question. He understood the fear and uncertainty in March and April due to the pandemic and that was the environment. Therefore, one can easily conclude that it was a rational decision to not do anything regardless. If COVID had not hit when it did, Mr. Hollander could have started at that point, and done enough for an extension. He believed Mr. Hollander's arguments could have been stronger, and Councilor Brownson is upset that the City went through so much process, along with Mr. Hollander, to get to a point where he was issued a permit to start construction on a four-story hotel despite the strong objections by the citizens of Astoria. He took a lot of heat for being one of three people who voted in favor of Mr. Hollander building the hotel. He understood the trepidations and concerns of the town, but Mr. Hollander was not being irrational. While the matter could be speculated in a number of ways, without a pandemic, Mr. Hollander would have had time to do the work necessary to qualify for an extension. He appreciated the work done by Staff. Planner Johnson did a good job of supporting the premise that the 15 months prior to the extension application was a reasonable point on the City's side as far as a lack of getting things done, the economy being good, the ability to get financing ahead of time. [1:06:50] He said all he knew is that Mr. Hollander did not have financing, he had not started anything and he could have if not for COVID, and it was reasonable for him to take a pause to see how everything played out.

Councilor Herman said she disagreed. First, the City Staff stated the 15 months prior to the extension application can be part of the Council's deliberations, but Mr. Hollander's attorney said it was not, so that is open to interpretation among the Council. Mr. Hollander testified that he believed that City was moving the goalposts while the Council and Planning Commission were discussing building heights in the Bridge Vista Overlay Zone. However, Mr. Hollander's height limit was set; he did not have to worry about his building being lowered because he had already been given the approval, so, that should not have affected his hesitancy to seek financing. He was guaranteed a four-story hotel. To her next point, she admitted she is not a developer, but on April 22, 2020, when Mr. Hollander filed for the extension, what if COVID-19 had never happened?

As someone not knowledgeable of construction, just over seven months seemed like a tall order to have completed enough work to qualify for an extension. She believed Mr. Hollander is using the pandemic as an excuse. She noted that she had no ex parte contacts since she joined the Council, but prior to joining the Council, she heard a lot of comments from Astorians who were opposed to the hotel project and did not feel the hotel would make Astoria a better place. These Astorians resent having a four-story wall being erected in one of the last large, open views of waterfront, and they especially resent that it is being done by a national hotel chain that does not reflect Astoria's character, even considering the significantly improved design from the original proposal. It is frustrating to see Mr. Hollander's comments in his letter today that he is baffled by the fact that Astorians were not happy that this hotel is coming to town.

Councilor Rocka stated that by all accounts, Mr. Hollander is a fine developer and Mr. Holtberg did a fine job representing him. He is troubled by some of the comments made by other Councilors and Staff's log. At the LUBA hearing, the attorney for Mr. Hollander tried to establish that progress had been made and cited applications for permits and so on; however, those applications are not shown on Staff's log. He did not believe anything was done after the approval of the hotel, which is somewhat troubling. As Councilor Brownson noted, even after April 2020, it would have been possible to talk with Staff and get the permit process started, which would have been evidence of moving forward with the project. Instead, in all the time since the permit was granted, nothing has been done as far as Council can see. It was a shame in a way. If Mr. Hollander had been able to start his hotel shortly after approval was given, he would have been sitting in a great spot right now. It

was not that things were starting to warm up in Astoria, it has been busy in Astoria since the middle of 2020, both on weekdays and in the off season, than normal. And this summer is expected to be a flood and it would be a great time to have a hotel here. Comments were made about the hotel being built to help Astoria. However, a hotel is not built in a vacuum; it is built in a place with an audience that the hotel can benefit from, and Astoria has that audience, which is why the city is attractive to developers. He did not know they were here; if Mr. Hollander had gone through the permit process, his project would be ready to build as soon as loans became available; but instead, time was being spent arguing things through LUBA. He is not convinced at this point that another extension is appropriate.

Councilor Hilton stated his question was why the Applicant did not try to achieve financing prior to the pandemic. Whether Mr. Hollander was going to move forward with the pause, and he didn't care about the 15 months, the Council is looking at evidence of the economic conditions; the evidence is prior to and now. The Appellant did not try to achieve financing, which is his question.

Mayor Jones noted that he and Councilor Brownson voted in favor of the project two and a half years ago, which was a vote to overturn the Design Review Commission (DRC) and Historic Landmarks Commission (HLC) rulings. He, Councilor Brownson, and then Mayor LaMear believed the project met the Code, so they voted to approve the project. He had stated at that meeting that if the community did not want four-story hotels, they needed to start the process of changing the Code, and over the subsequent several months, the Bridge Vista Overlay Zone was amended. However, that had no effect on the Fairfield Inn proposal because the hotel had already been approved. He checked in with the City Manager every couple of months to see if any work on the hotel had occurred. He was surprised that after approving this very contentious hotel proposal, two, six, eight, and ten months went by without any substantial movement forward on the project. He had expected the Applicant to move forward on January 1st, knowing community sentiment had moved against this kind of project. Despite getting lucky in having a 3 to 2 vote that overturned the DRC and HLC and approved a hotel, very little had been done a year later, not even with paperwork. When the extension request was made in April 2020 because of the pandemic, his first thought was that this request had nothing to do with the pandemic, it was about something else. Mr. Hollander testified a short while ago that he took a pause in this project because of other business considerations going on in the city, and not because of economic conditions. He did not support the argument that poor economic conditions advised against proceeding with the project.

Councilor Brownson said he was being a bit of a devil's advocate, adding he respected the discussion from the other Councilors. He wanted to be clear that the Council is addressing the right criteria. If Staff and the Council felt strongly about considering the 15 months prior to the request, he questioned why the Applicant did not get financing during that time, and how did the City addressing the Code amendments during that time have anything to do with Mr. Hollander going forward. He was very frustrated the project did not happen because the property has been a blight all this time. However, he is not convinced that the 15 months prior to the request was the criteria that the Council was being asked to address. He asked the City Attorney to state exactly what Council was addressing tonight.

City Attorney Henningsgaard clarified that the Council needed to decide whether poor economic conditions advised against proceeding with the project. The Council must interpret what that means and apply that meaning to the facts of the case. The Mayor has pointed out that Mr. Hollander decided not to proceed with the project for 15 months for some reason, and that there is a feeling on the Council that COVID-19 was not the reason for not proceeding. Councilor Hilton had pointed out that there was no evidence that Mr. Hollander ever applied for financing or was ever denied financing. The question is whether the Code requirements have been met on the basis of that record and that evidence.

Councilor Herman noted that Contract Planner Johnson provided extensive documentation of the work that the two other hotels, Bowline and Home2 Suites, have done around the same time that Mr. Hollander filed for his extension. This suggests that economic conditions certainly were good enough for those two substantial projects to proceed.

Mayor Jones said he supported the City Attorney's assertion that an actual denial letter of a loan application would carry a lot more weight than a letter from a bank saying conditions were not favorable right now for this type of financing. An actual denial would be actual evidence.

Councilor Rocka agreed the progress made by the other two hotels is germane. While those two hotels were not the same or new hotels, the permitting process would not have been burdensome to Mr. Hollander's project as there was no huge expense involved with that. The other hotels seemed to be able to move forward with that, which certainly weakens the argument that nothing could be done because of the economic conditions at that moment, and which everyone knows is certainly changing now.

Councilor Brownson stated he found Councilor Rocka's arguments compelling.

City Manager Estes stated Staff has gathered all the comments and reasons for the Council's approach and understood that findings needed to be developed to tentatively deny the permit extension request and continue to uphold the prior decision of the City Council. A tentative motion was sought to provide direction so Staff could return with a revised document for Council's consideration and final adoption on May 3rd, at which time revisions Council would still be able to direct any changes to the findings if necessary.

City Council Action: Motion made by Mayor Jones, seconded by Councilor Brownson, to tentatively deny Appeal AP20-02 by Hollander Hospitality and direct Staff to prepare findings in support of denial for consideration and adoption at the May 3, 2021 City Council meeting. Motion carried unanimously. Ayes: Councilors Brownson, Herman, Rocka, Hilton, and Mayor Jones; Nays: None.

City Manager Estes noted the public hearing had been closed and so on May 3rd, Council would have a final review and deliberation of the findings document prepared by Staff.

Mayor Jones called for a recess at 8:27 pm. The meeting reconvened at 8:35 pm.

Item 7(b): Birch Field Toys Discussion

At its July 7, 2020 meeting the City Council heard statements from Parks staff, representatives of the Friends of Alderbrook Parks (FOAP) Lisa Morley and Randy Harris, and neighbors of the park about the placement of noncommercial grade toys and items provided by FOAP for community members to use at the site. At that meeting, Council allowed the items in place to be left through Fall 2020 and mandated that FOAP contain and store all items through the winter and provide a proposal for their deliberation prior to replacing any play items or equipment in Spring 2021. FOAP has provided their proposal to Parks staff. As per Council direction, this item is being brought for City Council review in advance of any items being replaced at the site. It is recommended that Council provide direction to staff on how to proceed and if the proposed plan is acceptable.

Mayor Jones called for Councilor comments. Seeing none, he called for public comments.

Lisa Morley, 4908 Cedar Street, Astoria, Friends of Alderbrook Parks (FOAP), said she supported having toys in the park because she purchased them. Use of the park has increased and the toys take up a small fraction of space in the park. A storage shed was installed to put the toys away and the people who use the toys are putting them away on their own. She strongly advocated that the toys be allowed to remain in the park. She had heard comments that people should bring their own toys to the park and take them back home, but she had never seen that done. Children most likely used their toys in their own backyard.

Director Dart-McLean stated neighbors of the park had raised concerns about storing the toys through the winter. Parks Staff told the FOAP about those concerns and the toys are now being stored.

Mayor Jones noted that the community was divided on whether the toys should be allowed. He asked if FOAP was a formal group.

Ms. Morley responded that she and Randy Harris spoke to people in the neighborhood but there were no scheduled meetings.

Mayor Jones explained that there was an agreement between the City and an organization that did not exist. The FOAP formed in opposition to the proposal to sell the park and once that proposal was no longer being considered, the members of the group disappeared.

Ms. Morley said she did have a meeting with 30 to 40 people and offered to let them sign the agreement with the City. However, no one else wanted to sign.

Jeff Graham 4877 Cedar Street, Astoria, said he was a member of FOAP. There was nothing dangerous about the toys and children could just as easily get hurt walking down the street. The children in the neighborhood love the park.

Randy Harris, no address stated, said even though the FOAP had no formal meetings, they had presented over 100 signatures to the City Council from neighbors who agreed that the toys should be left out so they would be available to the children. He had been working with the Council and the Parks Department on this matter and he had not received any complaints. The only person who ever complained just sold their home and moved so he did not believe the City would see any more opposition to the toys in the park.

Councilor Rocka stated it was great that neighbors had taken on maintenance of the park. He believed that when the neighbors first offered to maintain the park, the Parks Department believed the proposal was to mow and maintain the grounds. The toys were a surprise and the issue is concerns about liability. No one believed that children should not have toys. However, toys built for home use are not appropriate for use in a public setting. While everyone might support these toys in the park now that would no longer be the case when someone gets hurt. The City could be subject to a lawsuit.

Ms. Morley said the City has parks that are dangerous and create a much bigger liability than the toys in Birch Field. The skate park is the most dangerous and has a sign that says no liability. She asked if she could put up a similar sign.

Mayor Jones explained the liability concern was about the larger items like the swing, not the smaller toys. He asked if the larger items had been removed.

Ms. Morley responded that the toddler swing set and a toddler roller coaster were still in the park.

Director Dart-McLean stated Staff spoke with CIS Insurance Risk Management and the manufacturer of the swing set and roller coaster. Both indicated that use in a public park was not the intended use of those toys, so there is a liability. Additionally, the type of toys being placed and replaced in the park could encourage others to seek the same level of interaction in other parks, which challenges for Staff's best practices and creates issues with park management.

City Manager Estes added that parks facilities constructed by the City are built according to best management practices for public parks and facilities. The equipment is specifically designed for that level of use and exposure. There is always some risk to owning and operating parks, but the City follows the rules for public amenities.

Ms. Morley said she disagreed that the City followed those rules. There were currently some severe safety issues in parks and she had photographs of broken and exposed facilities.

Mayor Jones said when this was discussed last year, he was okay with leaving a few toys, not adding more toys, storing the toys over the winter, and see how the neighborhood responded. The City received complaints that there were too many toys in the summer and they made the park look junky because they were not being put away in the shed. No additional toys should be added. If a new toy is placed in the park, one should be removed. This was not an example to be followed at other parks and if toys started showing up at other parks, he would vote to have them all removed. He would vote to allow the toys in this park if they are kept in the shed from October 31 through March 1, subject to change if the City began receiving complaints.

Councilor Hilton agreed that the toys already in the park should remain and no new toys should be added. Privately owned toys in a public park create a liability that someone must answer to and the City must protect the children and the community. The number one complaint in the neighborhood has been that the toys are not put away when children are done playing with them, so they need to be put in the shed.

Councilor Herman thanked Ms. Morley and Mr. Harris for purchasing the toys. She was concerned about the liability to the City from the swing set and roller coaster. She recommended they be removed.

Councilor Brownson stated he was comfortable with the situation and agreed with the Mayor and Councilor Hilton. The toys need to be put away instead of left strewn about. Once the City starts receiving complaints, the City will need to revisit this issue. He was glad people were using the park and wanted the situation to work out.

Mayor Jones confirmed the majority of the Council supported the following:

- Allowing the toys between March 1st and October 31st
- Prohibiting an increase in the number of toys currently at the park
- Allowing the toys on a trial basis
- The City Council will revisit the issue if the City receives complaints

City Manager Estes said Staff spent more time managing complaints about the toys than they would have spent managing the park. He asked City Council to clarify what level of complaints would trigger a review.

Councilor Hilton believed that the neighborhood should decide what would trigger a review.

Mayor Jones stated he took it seriously that this took a lot of Staff time that should have been spent on more important things for the City. FOAP should do whatever is necessary to resolve the complaints. Otherwise, the toys need to be removed.

City Manager Estes confirmed with Mayor Jones that Staff was directed to refer complaints to the FOAP for resolution.

Councilor Brownson agreed that Staff should not be wasting time on this. FOAP assumed responsibility when they chose to put the toys in the park and signed an agreement with the City.

Ms. Morley stated the FOAP would host at least two meetings over the summer and invite everyone in the neighborhood. When deciding on the number of complaints that would trigger a review by the City Council, she believed a distinction should be made between the number of people making complaints and the number of complaints. There were a total of four people who complained and they submitted a substantial number of complaints.

Item 7(c): Consideration of Parklet for Brut Wine Bar

The Astoria City Council has established a set of policies to allow parklets to be established in rights of way. A Parklet application (PL21-01) was submitted by Lisa Parks, owner of Brut Wine Bar, for 240 10th Street. The Parklet is to be located on 10th Street and will front the business and meets all other requirements, as conditioned. The applicant contacted all property owners on the block to solicit input. The applicant submitted all the required application material: the application form, site plan, concept design, verification of neighboring property owners, a design that meets site distance and safety requirements, and proof of insurance. An analysis of the Parklet is included as well as all the submitted application material. Staff recommends approval with the conditions that the applicant be required to provide access to the gas valve on the southern edge of the site and that the prior approved parklet for Merrytime Bar and Grill be rescinded.

Director Leatherman said this parklet would not be covered. She received feedback from the Astoria Downtown Historic District Association (ADHDA) in support of the application.

Councilor Rocka noted that the parklet was temporary and intended to help restaurants during the pandemic. The City should be clear about what happens to the parklets when indoor dining is no longer prohibited.

City Manager Estes clarified that once the emergency declaration expires, covers in parklets would need to be removed immediately and the Council will discuss whether the parklet policy should be codified.

City Council Action: Motion made by Councilor Herman, seconded by Councilor Hilton to approve Parklet Application PL21-01 by Lisa Parks with the conditions stated in the Staff report and rescind the parklet for Merrytime Bar and Grill. Motion carried unanimously. Ayes: Councilors Brownson, Herman, Rocka, Hilton, and Mayor Jones; Nays: None.

Item 7(d): Authorization to Award Contract – 2021 Timber Sale (Prickly Patches)

A variable retention harvest project is proposed for 43 acres of the Bear Creek Watershed during the summer of 2021. On February 16, 2021, City Council authorized staff to solicit bids for the project. On March 19, 2021, the City received a bid from Hampton Tree Farms. The estimated revenue is \$309,695.05 after subtracting \$50,000.00 for roadwork. It is recommended that City Council authorize the award of the 2021 Timber Sale (Prickly Patches) to Hampton Tree Farms, LLC.

Councilor Rocka asked how the contractor would be supervised to make sure scope of work was done as agreed. He also wanted to know what would be done if improper work caused damage to the watershed.

Director Harrington stated that the City Forester watches the project closely. Before the project starts, the roads will be improved to reduce runoff. At the end of the season, Staff makes sure that work is completed in plenty of time to stabilize the area before winter. This could mean terminating a contract early depending on weather.

City Council Action: Motion made by Councilor Brownson, seconded by Councilor Hilton to authorize the award of the 2021 Timber Sale (Prickly Patches) to Hampton Tree Farms, LLC. Motion carried unanimously. Ayes: Councilors Brownson, Herman, Rocka, Hilton, and Mayor Jones; Nays: None.

Item 7(e): Consider City Council Goals 2021-2023 for Adoption

The draft City Council Goals are the product of the February 10, 2021 City Council goal setting session. The Council developed goals for a two-year cycle for the fiscal years 2021-2022 and 2022-2023. Fiscal years begin July 1st. The draft goal document was presented at the March 1st City Council meeting. Goal language for the library was deferred until the April 7, 2021 City Council work session where the remodel was discussed. Now that the work session is complete, new language has been added and have been brought back to City Council for final adoption in advance of the budget hearings. It is recommended that the Council consider adoption of the City Council goals for fiscal years 2021-2023.

City Council Action: Motion made by Councilor Brownson, seconded by Councilor Herman, to adopt the City Council goals for fiscal years 2021-2023. Motion carried unanimously. Ayes: Councilors Brownson, Herman, Rocka, Hilton, and Mayor Jones; Nays: None.

Item 7(f): Resolution Establishing American Rescue Plan (ARP) Act of 2021 – Fund #130

March 11, 2021 HR 1319 – American Rescue Plan (ARP) Act of 2021 became Law. Subtitle M of the ARP Act provides appropriation information for State and Local Fiscal Recovery funds from the United States Treasury. It is anticipated the first half will be distributed to cities no later than 60 days after the required certifications are made to the Treasury. The remainder of distributions are anticipated near June 2022. Funding may be utilized through December 31, 2024. Staff is currently awaiting additional information through League of Oregon Cities and the State regarding distribution timelines and other parameters which will be necessary to determine fund use in the future.

In order to facilitate the tracking of resource and requirements related to the ARP Act of 2021, the Finance Department is requesting creation of a new fund. It is recommended that Council approve the resolution.

City Council Action: Motion made by Councilor Rocka, seconded by Councilor Brownson, to approve the Resolution establishing the American Rescue Plan Act of 2021 Fund #130. Motion carried unanimously. Ayes: Councilors Brownson, Herman, Rocka, Hilton, and Mayor Jones; Nays: None.

Item 7(g): Consideration of Resolution to Transfer \$60,000 from General Fund #001 Contingency to Materials and Services appropriations of Community Development Department within same fund for Fiscal Year 2020-21

ORS 294.463(2) provides guidance for the transfer of appropriations from contingency of less than 15 percent of appropriations, when authorized by resolution of the governing body. At the time the General Fund Budget

was prepared the City did not anticipate the volume of permits, staff leaves of absences, and number of appeals which would arise. In order to provide appropriate oversight of development review assistance and other planning needs, the City has a contract to assist with these items. While the contract was developed to cover the remaining projects, it became necessary to engage the contractor in other projects due to medically required leave of absence for City staff. A transfer in the amount of \$ 60,000 is required between Contingency and Materials and Services of the Community Development budget to provide for the increased amount required through contracted service through the end of the fiscal year. The \$60,000 transfer in addition to previously adopted contingency transfers represents 0.6 percent of total General Fund appropriations.

It is recommended that City Council approve transfer the of \$60,000 from the General Fund Contingency to Materials and Services appropriations of the Community Development Department budget.

City Council Action: Motion made by Councilor Rocka, seconded by Councilor Hilton, to approve the transfer of \$60,000 from the General Fund Contingency to Materials and Services appropriations of the Community Development Department budget. Motion carried unanimously. Ayes: Councilors Brownson, Herman, Rocka, Hilton, and Mayor Jones; Nays: None.

Item 7(h): Consider Local Government Grant Award Agreement for Riverwalk Improvement

The Oregon Parks and Recreation Department announced that the City of Astoria was a recipient of funding for Riverwalk improvements through the Local Government Grant (LGG) program and was awarded \$428,408 to be used to add lighting; signage; a restroom at the future Nordic Park location; ADA accessibility features along the western portion of the Riverwalk; as well to as hire a project manager to facilitate the project's successful completion. The agreement is presented as the City's acceptance of this award and acknowledgement of the requirements of the grant. It is recommended that Council authorize staff to enter into this agreement and accept the stipulations presented by the State of Oregon in order to receive these funds.

City Manager Estes thanked the ADHDA, the Chamber of Commerce, and Staff for working on this grant application. He confirmed for Councilor Herman that the project timeline would be worked out alongside the budget process.

Director Dart-McLean added that the grant agreement was good through December 2023, which is adequate time to get all the work done.

City Council Action: Motion made by Councilor Brownson, seconded by Councilor Hilton, to authorize Staff to enter into a grant agreement with the State of Oregon and accept the stipulations presented by the State of Oregon for Riverwalk improvement funds. Motion carried unanimously. Ayes: Councilors Brownson, Herman, Rocka, Hilton, and Mayor Jones; Nays: None.


NEW BUSINESS & MISCELLANEOUS, PUBLIC COMMENTS (NON-AGENDA)

City Manager Estes said the next City Council work session was scheduled for Wednesday, April 21, 2021.

ADJOURNMENT

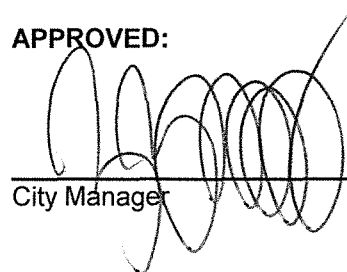
There being no further business, the meeting was adjourned at 9:24 pm.

ATTEST:



Finance Director

APPROVED:



City Manager

