

MINUTES OF THE PROCEEDING OF THE CITY COUNCIL

September 20, 1994

The minutes of the proceedings of a regular meeting of the City Council of the City of Coos Bay, Coos County, Oregon, beginning with a work session at 7:00 P.M. in the Council Chambers of City Hall and proceeding to regular session in the Council Chambers at 7:30 P.M.

Those Present

Those present were Mayor Joanne Verger, Councilors Gary Combs, Gene McCabe, Gene Melton and David Williams. City staff present included City Manager Jim Watson, City Recorder Gail George, City Attorney Paula Bechtold, Library Director Carol Ventgen, Police Captain Lee Benson, Public Works Director Ralph Dunham, and Planning Coordinator Kevin Cupples. Members of the media were also present.

Work Session

Mayor Verger reviewed the agenda for the meeting. The awarding of a bid for an emulsion kettle was added to the consent calendar as item 1 (d). Councilor Combs asked how the bid that was less than half of the others did not meet the specifications and was therefore not accepted. Public Works Director Ralph Dunham explained that the low bid did not include an air cleaning system and the motor is not submerged. Both of these will save time and money, especially the way the machine is cleaned. The machine bid with the low price uses a system which produces a hazardous waste product that must be stored in drums and disposed of at the cost of \$300 to \$400 per barrel. Combs asked if the City Attorney had reviewed the bids and agreed that the bid by Sahlberg did not meet the specifications. City Attorney Paula Bechtold replied that she had not reviewed either the proposals or the bids submitted. Councilor McCabe asked if the shops could make another machine such as the one they are currently using and Dunham explained that the main problem with one that could be made at the shops is that it is not a heated machine and uses a more expensive product while doing an inferior job.

Verger went over the history of the sewer rate increases recently adopted which put a flat rate in effect and the subsequent protest by many apartment owners. The revised increase on the agenda tonight goes back to a consumption rate per hundred cubic feet, but with a higher base rate. She noted that the staff recommendation had been published in the paper. Councilor Combs asked Dunham to explain how he arrived at the first set of figures given to the Council. Dunham explained the flat rate was calculated to provide steady income that would cover the costs of treating the sewage for the next few years. He also explained that our costs for operating the plants and treating the sewage do not vary substantially with increased or decreased flows. He said that the flat rate more closely matched the cost of providing service to the residential customer, but the Environmental Protection Agency prefers rates based on consumption. He mentioned that there is a difference in cost of providing treatment to someone several miles from the plant as opposed to someone living adjacent to the plant, but it would be unfair to charge residents differing rates. Dunham remarked that a flat rate would effect each person differently, some seeing an increase and others having their bills decreased. Verger asked if Dunham agreed that the new proposed rate structure was due partially to the fact that the apartment owners were not interested in a flat rate with

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a rebate for low users. Dunham agreed that their position certainly influenced his decision. Verger said her main interest was in being fair to all users and wanted it known that the staff recommendation was due to influence by special interests. She wanted it fully explained that the Council makes their decision based on staff recommendation which she hopes has been given a lot of thought and consideration.

Councilor Combs asked if the Tree Board decision in item six was what Mr. Day asked for. It was explained that the Tree Board decision modified Day's request.

COUNCIL MEETING

Flag Salute

Mayor Verger called the meeting to order and led the assembly in the salute to the flag.

Consent Calendar

Mayor Verger read the consent calendar which included the following items:

- a) Approval of the minutes of the regular meeting of September 6, 1994.
- b) Approval warrants for August, 1994.
- c) Adoption of Planning Commission recommendation and approval of the tentative Plat for the Seagate Subdivision - File # 94-16.
- d) Award of bid for an emulsion kettle to Special Asphalt for \$13,650.

Councilor Melton moved for approval of the consent calendar. The motion was seconded by Councilor Combs and carried with the Mayor and all Councilors present voting aye.

Public Comments

No one appeared to make public comment.

Safety Town Volunteer Recognition

Becki Cheslock recognized the volunteers who helped with Safety Town, enabling many children to attend and mentioned that much of the program was funded by the Bay Area Sportsman's Association. She noted that the program could not exist without the certified teachers and teenage volunteers and the many others who helped. Cheslock then presented certificates of appreciation to those volunteers in attendance. The Mayor expressed her appreciation for the volunteers and also thanked Jane Olbekson, the City's Volunteer Coordinator for her effort in organizing the project each year.

Library Preliminary Design Phase Report

Tom Williscroft, Chair of the Library Board of Trustees, reported that the Board met and

approved the preliminary design for expanding the library and sent it on to the Council for approval. Councilor Melton commented that he felt that \$40,000 was high for landscaping and questioned the \$250,000 projected for permits, fees, testing and surveys. Architect Richard Turi explained that the fees are based on 8% of the building costs and includes many items. Councilor Combs said that he felt the figure for permits and fees was reasonable and complimented Turi on his efforts to keep costs down. When asked, Turi explained that since the original library which is included in the design is on pilings, the expansion should be also. Turi reviewed the concepts presented to the Council earlier for the benefit of the audience and Council members who were not in attendance at that meeting. He said that one consideration was the operational cost, another was aesthetics, using the exterior design of the current library which is well liked. He noted that the design incorporates as much of the current library as possible leaving restrooms and other expensive features intact, while leaving the current library open during construction. Turi went on to explain the size of the expansion was calculated to provide space for the library to grow over the next twenty or thirty years. He remarked that his design would require the acquisition of some property and vacating Bennett street and showed drawings of the exterior and floor plan to the Council. He reported that the design has one hundred sixteen parking spaces and incorporates part of Sixth Street. He reviewed the preliminary design pointing out features such as the meeting rooms, children's area and pointed out how the existing facility will be used without many changes. Mayor Verger said she hoped the Council will adopt this preliminary design and authorize proceeding as funds are available. Jim Watson told the Council that the Finance Director has worked out a funding schedule and project timetable which will allow construction over the next three or four years without issuing bonds. Watson also explained that the request for a scale model would be funded with the funds remaining from those allocated for the preliminary design. Councilor McCabe moved that the report be approved, the preliminary design be approved, that the City move ahead with the project as funds are available and construct a scale model. The motion was seconded by Councilor Williams and carried with the Mayor and all Councilors present voting aye.

Resolution 94-17 - Amending Sewer Rates

Mayor Verger explained that this resolution would put rates back to a consumption basis as they were before the flat rate was adopted last month. She asked that this item be held over to the next meeting so that a full council could be in attendance for the vote and the Council was in agreement.

Tree Board Appeal - North Third Court

City Attorney Paula Bechtold suggested that the Council review the background of the Tree Board process before handling this or the next appeal. Ralph Dunham explained that the Tree Board was formed by ordinance with duties including having a plan for existing and replacement trees within the City. He said the City is responsible for the trees in the right-of-way. He remarked that the Tree Board deals with all trees located on public property and often wants agreement from adjoining property owners before allowing trees to be removed. Jim Watson apprised the Council that in his opinion, the City has taken a fundamental right away from property owners in having the Tree Board make decisions about trees in the right-of-way which historically were left to adjacent

property owners. He informed the Council that with the current system, anyone can now come in and object to or appeal a decision about trees in the right-of-way and he feels they will probably be seeing a lot of appeals. His point was to make sure that the Council was aware of the change in who has control over the trees in the right-of-way adjacent to a person's property. Paula Bechtold explained that legally, the trees in the right-of-way belong to the adjoining property owner and while the City has the right to put a street through, they have no right to remove trees. She also felt there are questions that had to be answered such as who has standing to appeal the decision and since it is not addressed by the ordinance, anyone has standing to appeal. She noted that the ordinance calls for review of how the Tree Board is working in three years, and although it has not been three years since the ordinance was put in place, these are the types of things that may need to be changed. Mayor Verger said she had a problem with overturning a decision made at a legal meeting by a majority of the members present, referring to the meeting of the Marine Terrace Condominium owners. Dunham told the Council he received the request from Mr. Day to cut the trees in question. He informed Mr. Day that the request would be taken to the Tree Board and the Board would want to get the opinion of the adjacent property owners. Dunham reported that Mr. Day went to a meeting of the condominium owners and received their approval. He said the Tree Board reviewed Day's request at two meetings and came up with their recommendation which is being appealed to the Council tonight and which the Board considered a compromise.

Sandy Jochum, resident of Marine Terrace, asked the Council to consider what would happen if the trees in question were removed and set up the potential for a landslide. She also felt there would be an erosion problem on the steep slope where the trees are located and does not see why any of the trees should be removed. In her opinion, the trees also provide some protection to the condominiums, one of which lost a roof in earlier years due to a windstorm before it was protected by the trees in question. When questioned by Verger, Jochum said she did not vote to remove the trees and was under the impression that if the residents voted yes, that the trees would be taken out immediately. Councilor McCabe asked if Dunham felt there was a problem from one of the trees that was close to the edge and might pose a danger. Dunham replied that as the trees exist today, they are not dangerous. He also said trees spaced as these are do not provide help in a landslide and was concerned that further trimming could damage the trees. Councilor Combs asked if Dunham had checked with the County Extension agent about damaging the trees with further trimming and Dunham replied that he is relying on information obtained from the State Forester. Verger asked why the Tree Board didn't go along with the request of Day and the favorable vote by the residents of the condominium to cut all six trees. Dunham reported that the Board looked at the problems and heard the opposition from Jochum and then made their recommendation.

Vi Fietz, neighbor of Marine Terrace, voiced her opinion that she felt it was not right for someone three blocks away to be able to cut these trees down. Bechtold pointed out that some of the people at the condominium owners meeting who approved the trees being cut, later signed the petition objecting to the trees being cut. Combs reiterated that there was no public safety issue at this time. Verger would not like to make a decision until she knows how the condominium owners feel about the trees at this time. Bechtold reminded the Council that the purpose of the Tree Board is to make these decisions instead of the property owners, but told them that they could make a finding that no trees should be cut, decide that all six could be cut, or affirm the Tree Board decision. Verger said she has a problem not respecting the Tree Board decision as they visited the sight and a councilor sits on the Board. When asked, Dunham explained that the Tree Board arrived at their

decision taking into account how to best solve the problem with pine needles and the sight problem. Verger asked if anyone wanted to cut all six trees and none did. She then asked who was in favor of not allowing any trees to be cut, and Combs and McCabe raised their hands. Verger asked if the other two were in favor of supporting the Tree Board's decision. Councilor Williams replied that he would probably vote to uphold their decision, but would like to see this worked out between the property owners. Councilor Melton stated his position would be to uphold the Tree Board decision. Verger said that she is not sure that three trees should be removed but that she would support the decision of the Tree Board. There was more discussion on the vote taken by the condominium owners. McCabe wondered why they couldn't be topped and was informed that it was not allowed under the ordinance. Dunham explained the prohibition against topping was to protect the health of the tree as topping creates a weak point in the tree and allows disease in.

Katie Jumper, gardner at the Marine Terrace, said that tree number two, which is slated for removal, is one of the tallest, straightest, healthiest trees up there. She also would not recommend removing tree number four. Jumper reported that the soil on the bank is very loose and is currently covered by ivy, and there are rhododendrons between the trees. It is her opinion that removal of the large trees would create an erosion problem on the bank. Jumper reported that she feels most of the views are interrupted very little from these trees and the neighbor with complaints about the needles from the trees is putting the needles over on the condominium property for Jumper to dispose of or use as mulch. In her opinion, there is not a big problem with needles or views. Verger asked Watson for his opinion and he replied that the ordinance was put together to save trees and that trees should not be removed without compelling reasons. In his opinion, the Tree Board should not get involved in neighborhood disputes and that view should not be a consideration for removing trees.

Verger related that she had a problem with overturning decisions made by citizen committees after all their work on the issue. Dunham pointed out that in matters of safety or diseased trees, the Tree Board does not become involved, the City can have the tree removed. He noted that the Board's job is to deal with the aesthetic type matters. Watson felt the condominium owners may not have looked at whether or not the removal of the trees would cause erosion problems on the bank. Williams said he thought the Council should deny the tree board recommendation and those desirous of removing the trees could start the process over again. Mayor Verger moved that the Tree Board recommendation be denied and no trees be cut. Councilor Combs seconded the motion and mentioned he would like to see the ordinance reviewed. Chris Guernsey, neighboring resident, felt that taking out the trees would bring an unwelcome change in the direction of the wind. The question was called and the motion carried with the Mayor and all Councilors present voting aye.

Tree Board Appeal - Thirteenth and Commercial

Mayor Verger related that the appeal is from Mr. Jonas who wanted to remove some trees at 13th and Commercial and his request was denied by the Tree Board. Ralph Dunham stated that Jonas' house was above the trees and he reported having some roof damage from needles. Dunham said the area is fairly open, the trees are all healthy and the trees are seventy to eighty feet tall. Jonas was not present at the meeting. Councilor Combs moved to accept staff recommendation to uphold the Tree Board decision and not allow the trees to be cut. The motion was seconded by Councilor McCabe and carried with the Mayor and all Councilors present voting aye

Award of Bid - Empire Lakes Trail Paving Project

Councilor Melton moved to award the bid to Johnson Rock for the paving of the Empire Lakes trails as bid plus arrange for paving an additional 600 feet. The motion was seconded by Councilor Combs. Melton asked if this would complete the paving of all the trails and was told it would. The question was called and the motion carried with the Mayor and all Councilors present voting aye.

Continuation of Public Hearing - Approval of Water's Edge Subdivision

Mayor Verger opened the public hearing which was continued from the last meeting. Councilor Combs declared that his wife worked for the attorney representing the developer and he lived in the neighborhood, but felt that he could render an impartial decision. Kevin Cupples had nothing to add to information provided at the previous meeting. Paula Bechtold informed the Council that she has had a chance to review the case cited by Roger Gould and feels the condition in question would not be prohibited by that case. She feels the condition is reasonably necessary due to the impact on traffic. Bechtold then commented on Gould's assertion that the general rule of law is that off-site improvements can not be required in order to approve a subdivision, and found that to be correct. She further stated that the City can take into consideration what the off-site problems are and although they can not require the improvements, they can deny the request for the subdivision. She found an Oregon case dealing with off-site improvements being required for subdivision approval in Clakamas County and the Land Use Board of Appeals ruled that a portion of the cost of off-site improvements could be required to be paid by the developer. She concluded that despite the general rule of law prohibiting off-site improvements, an Oregon case seems to indicate a requirement for partial payment for off-site improvements by the developer of a subdivision.

Bechtold advised the Council that they have several options, the first being to find that it would not be appropriate to require the developer to pay for off-site improvements, but then find the streets would not be adequate and deny the subdivision. The second would be to adopt the Planning Commission recommendation as written. A third option would be to adopt the planning commission recommendation with the exception of the condition requiring the off-site improvements, or fourth, remand the matter back to the Planning Commission and ask them to look at the Clakamas County decision and require the developer to only pay for the portion of the improvements required because of the subdivision. She said the City may need to do the improvements but assess a portion of the costs to the developer.

Gould suggested that the Council approve the subdivision as it was approved by the Planning Commission without the requirement of the off-site improvements requiring the straightening out the curves at the east and west end of the roadway. It is his opinion that the road is already an arterial and there is no proof that the subdivision is causing a need for these curves to be straightened. He felt the Council could come back at some later time and fix the road if indeed it needed fixing. Verger asked why it would not be better to get a variance as mentioned in the Planning Commission recommendation. Gould said that unless it is made a condition, there is

nothing to get a variance for. Councilor McCabe asked how far the curves were from the subdivision and whether there is another access to the subdivision. Gould replied that he did not know how far the curves were from the subdivision and that the subdivision would exit on a straighter part of Lakeshore Drive, between the curves. McCabe asked if there was another way out, and Gould replied that there was. Verger asked if most of the accidents were caused by speed and darkness and wondered if the new lighting being put in by the developer would help. Gould argued that the improvements being put in by the developer would improve the safety. He also argued that imposing this condition would be a taking and asked the Council to approve his request tonight. Verger asked Cupples why the Planning Commission is asking the developer for the condition in question. Cupples replied that the requirement was based on the estimated increased traffic load created by the subdivision and staff felt there would be a safety hazard if the improvements were not made. He felt that if this condition were not left in, the Council might want to deny the subdivision. Cupples mentioned that there is the possibility of completely straightening out the road and having different traffic patterns. Watson asked if the Planning Commission looked at whether or not the road should be straightened out regardless of the subdivision because it was not up to standards now. Councilor McCabe said he didn't understand how the City could make the developer straighten out the road when it is already a problem. Combs asked if the bike path and sidewalk would still be put in to which Gould answered in the affirmative. Gould restated his position that since part of the property needed to straighten out the road belonged to the college, it could not be condemned for a road. Verger felt it was not right for the City to require the developer to bear the burden of fixing the road, and felt it would be safer with the improvements being made by the developer. Verger reiterated that the Council takes the recommendations of the Planning Commission very seriously and does not overturn them without a lot of consideration.

Councilor Williams moved to close the public hearing. The motion was seconded by Councilor Melton and carried with the Mayor and all Councilors present voting aye

Councilor Williams moved to approve the Planning Commission's final recommendation on the Water's Edge Subdivision with the exception of condition 3d. Councilor Melton seconded the motion. Councilor McCabe declared that his son was on the planning commission but he has had no discussion of this matter with him or with the developer. The question was called and the motion carried with the Mayor and all Councilors present voting aye.

City Attorney Report

Paula Bechtold reported that the police arbitration had taken place last week and they are awaiting the arbitrator's decision.

City Manager Report

Jim Watson reported that Mingus Lake is being drained later this week and efforts will be made to preserve the fish and the upper pond will be available for the ducks. He related that the Empire historical monument is ready for installation and will tell the history of Empire. He announced that nautical flags have been put up in the Empire commercial district and look very nice. Watson let the Council know that Rotary will be helping install playground equipment in Taylor Wasson park on Saturday.

Council Comments

Councilor Williams asked when the improvement will be commenced in the second block of Central Avenue. Dunham replied that it would be out to bid in the next week or two.

Councilor Combs said it was nice to see the financial and labor help from Rotary on Taylor Wasson Park and really likes this type of public-private cooperation. He felt an excellent job was done by the Mayor and staff in hosting the Governor at the Boardwalk. Combs noted that the Parks commission will be reporting on the usage of the Scout Cabin and the agreement for the caretaker.

Councilor Melton said he enjoyed the great parade and Fun Festival. He asked where the City was at in the selection process to replace the City Manager. Verger replied that the Council met and selected all but one of the finalists and are in the process of setting up the assessment center for the six finalists. She explained that it will probably be narrowed down to three when it comes back to the Council from the assessment center.

Mayor Verger noted that the Governor enjoyed her visit to the South Coast. She mentioned that she was disappointed that there were no flags up yet and no shrubs planted yet. Verger reported on her meeting with investors in the CEDCO resort including Lee Iacocca and others. She was impressed with his enthusiasm and optimism for the potential of this area. She was asked about how the community felt about their project and reported that she had received three letters and two people had addressed the Council in opposition to the project. Verger related that she was happy with the selection process and had been meeting with Jim Watson to be sure there is continuity during the transition.

Adjournment

There being no further business to come before the Council, Mayor Verger adjourned the meeting to 7:00 o'clock P.M. in the Council Chambers of City Hall on October 4, 1994.

Joanne Verger
Mayor of the City of Coos Bay
Coos County, Oregon

ATTEST:

Gail George
Recorder of the City of Coos Bay
Coos County, Oregon