

## MINUTES OF THE PROCEEDING OF THE CITY COUNCIL

October 18, 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 Joe Benetti, Gene McCabe, Cindi Miller and David Williams. City staff present included Interim City Manager Bruce Meithof, Acting City Recorder Mary Beth Holst, Library Director Carol Ventgen, Police Chief Marc Adams, Public Works Director Ralph Dunham, City Attorney Paula Bechtold, and Fire Chief Cliff Vaniman. Members of the media were also present.

### **Work Session**

Councilor Combs said he felt a lot of thought went into placing stop signs and that the Council should carefully consider removal of existing stop signs. Mayor Verger noted that the Library Board recommendation was for Jim Watson to replace Ralph Mohr. Councilor Combs wanted to know if the City was losing any items on the specifications by taking the low bid for the Quint. Chief Vaniman verified that the low bid met all requirements with the optional equipment on board and noted that by going to a single axle the bid come in \$34,000 under the original estimate. He also related that the timber sales money, some of which will be used to purchase this piece of equipment, did come in.

Mayor Verger asked Bruce Meithof to explain the request to reconsider the Tree Board appeal. After explaining what process the request had been through, he informed the Council that the basis for the request is that Mr. Day felt he was not adequately notified of the meeting regarding the appeal of the decision to the City Council, and he didn't have the chance to present his side of the issue. He also stated he had a discussion with the City Attorney and was told that any trees in the right-of-way belong to the adjacent property owner and the City on appeal, or via the Tree Board, cannot approve more trees to be cut than are approved by the owner to be cut, but the City can veto the cutting of any trees or limit the cutting of trees to less than what the owner would approve of. Meithof reviewed that the Marine Terrace Condominium Association's decision was to cut some of the high trees, not saying how many, and they appointed Sandy Jochum, who is a member of the Association, to work with Mr. Day in selecting which trees would be cut and which trees would be re-planted. He added that the council made a decision to cut no trees which falls within their legal rights and they can stand by their prior decision. It was his suggestion that they rescind their previous motion on the appeal and remand the request back to the Condominium Owners Association to determine what it is that the owner is approving to be cut. Councilor Williams said he was in favor of the parties involved working out a solution amongst themselves. Verger expressed her frustration when considering the appeal with the advice of the City Attorney to not go back to what happened prior to the Tree Board decision, but to only consider the appeal of the Tree Board decision to cut three trees. The City Attorney, Paula Bechtold, did not remember saying that the Council should not look at the prior meeting, but did say that the appeal was from

the Tree Board decision. Verger explained she still had a problem if the condominium owners had a legal meeting with a quorum present and voted to cut the trees, that the Council had overturned that. Bechtold said that since the Council voted not to cut any trees, they were within their rights under the city ordinance. Verger further stated that she feels the Council needs to look at the Tree Ordinance as it appears to have some problems. Rex Miller, member of the Tree Board said that they are responsible for the best interest of the trees and their decisions are not political ones. He and two other members of the Board feel that if the Council is going to overturn their decisions, then they really don't need a Tree Board. He related that they have taken time to go out and look at the trees, talked to the owners, and in their professions, done the best job they can to come up with their decision, and their decisions are in the best interest of the trees. He also felt that the Tree Board and the Ordinance need some credibility and some teeth or it as many people ignore the ordinance and nothing is done. Verger asked Miller if he feels the council should never look at their decisions with a difference of opinion. Miller replied that he would like the Council to look at the trees before they make their decision as some of the trees should be removed. The Mayor feels there is a real weakness in the ordinance which does not state by whom and for what reasons an appeal of a Tree Board decision can be filed. Miller reiterated that the Tree Board does not make decisions they cannot stand behind and that they are willing to take the heat for their decisions. The councilors remarked they would like more communication between the Tree Board and the Council when an appeal has been filed. Verger said they did not receive any information on why they made their decision and asked if anything came up at the Tree Board about erosion. Miller said he cannot recall that being discussed but the wind shifting was. There was consensus that the Tree Board would provide more information to the Council when a decision is being appealed. Councilor Combs asked if there were public safety concerns and Miller said with heavy snow or high winds there was a potential for limbs to fall, but not in a normal winter. Councilor Benetti asked Bechtold if the City needed approval of the owners if the trees in question are a hazard. Bechtold replied that hazardous trees are in a different situation. Councilor McCabe asked if Miller's statement that no trees in the City would be allowed to be topped was correct. Bechtold replied that topping of trees on public property was prohibited by the ordinance without special permission.

## **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 October 4, 1994.
- b) Approval of warrants for September 1994.
- c) Approval of removal of a stop sign at Lockhart and 4th Street.

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

### **Public Comments**

No one appeared to make public comments.

### **Selection of Coos District Library Board Member**

Councilor Benetti moved that Jim Watson be appointed to serve as the City's representative on the Coos District Library Board. The motion was seconded by Councilor Miller and carried with the Mayor and all Councilors present voting aye.

### **Award of Bid for purchase of Fire Department Quint (Pumper/Aerial Combination)**

Fire Chief Cliff Vaniman gave a brief description of the equipment to be purchased and reviewed the four bids received. He noted that the low bid was for a piece of Central States Fire Equipment and was approximately \$34,000 less than the original estimate. Councilor McCabe moved to accept the staff recommendation and award the bid to Evergreen Emergency Vehicles for one Central States Quint at a cost of \$376,662. Councilor Miller seconded the motion. Mayor Verger mentioned that after many long years of neglect, Chief Vaniman has taken over and raised the standards of professionalism and equipment in the fire department through good long range planning and budgeting. She said was glad the city has been financially able to purchase this equipment for the community and asked that he continue in this direction. Councilor Combs asked if this apparatus meet the minimum specifications and if the financing was in place. Chief Vaniman replied that the quint meets the specifications advertised and the budgeted funds are available. Councilor Williams wanted it noted that this piece of equipment will replace a 1953 ladder truck. The Mayor called for the question and the motion carried with the Mayor and all Councilors present voting aye.

### **Tree Board Appeal - North 3rd Court**

Mayor Verger noted that while the ordinance does not require notifying all individuals of any appeal, it is the practice of the City to always notify people who are involved in any kind of appeal or process. She reopened the Tree Board appeal because Mr. Day was not present. Bruce Meithof went over the background of the appeal starting with Mr. Day's initial request to cut six trees in the Date and 3rd Court area between Date and the Marine Terrace Condominiums. To the best of his knowledge, the request was presented to the Marine Terrace Condominium Owners Association who had a meeting and voted to cut some of the high trees and appointed Sandy Jochum to work with Mr. Day and the neighbors on deciding which trees would be cut and which would be re-planted. He said the recommendation of the Owners Association along with Mr. Day's request was presented to the Tree Board, the Tree Board's decision after looking at the trees was to cut three of the trees and to replant one in the place of the three, and Mr. Day was notified of that decision. Meithof said the decision was appealed to the City Council and the City thought they had notified all interested

parties, although not in writing. He reviewed that the Council held the appeal and the Council decided to cut no trees, after which Mr. Day felt he had not been given adequate notice and therefore was not present to offer testimony before the Council. Meithof then related information received from the City Attorney that all trees in the right-of-way belong to the adjacent property owner depending on the plat lines and borders. He went on to say that the owner must approve cutting of any trees other than dangerous trees and that the City cannot approve cutting more non-dangerous trees than the owner would allow. He told the Council their options as this point are to stand by their motion to cut no trees or they can rescind their motion and re-open the appeal hearing for additional testimony. Meithof said that all the applicants have been notified of this hearing in writing so the appeal could be re-heard tonight with the Council making a new decision, or they can rescind the decision made earlier and remand it back to the original owners for clarification of their original decision as to the number of trees they approved removing. Councilor Benetti made a motion with a second by Councilor Miller to rescind the Council's previous decision on this appeal and to reopen the Tree Board Appeal. The motion carried with the Mayor and all Councilors present voting aye. The Mayor then re-opened the hearing on the appeal.

Charles Day, Coos Bay, said he was never notified, even verbally, of an appeal of the Tree Board's decision and said he was applying for a permit to cut the trees when he found out about the appeal. He stated that he was representing not only himself but Lee and Elaine Hurst and Tom and Gloria Hilstrom in front of both the Tree Board and the Marine Terrace Owners. Day related that prior to the tree ordinance the neighbors have cooperated with each other to cut trees primarily for view preservation noting that he feels they paid for a view and his taxes reflect that. He went on to say that the original request was to have the trees topped, which request was taken to Jerry Hill and was told it would go to the next semi-annual meeting of the Owners Association of the Marine Terrace Condominium. He gave the city a copy of the letter that was sent to Mr. Hill and feels that he is being made to look bad when he didn't have a chance to defend himself. Day noted that in his opinion there were many misstatements in the petition given to the Council at their previous meeting especially in regards to him misleading the condominium owners. He said his request was to remove six trees out of thirty-eight in the area and was willing to accept the Tree Board's decision to allow only three trees to be cut. Day expressed his concern that there was nothing in the ordinance about preserving views and thought that perhaps there should be a member of the real estate profession or a homeowner on the Tree Board. He does not feel that every tree that grows on city property should be allowed to grow forever and said he would like the Council to go along with the original Tree Board decision. He feels Hill can go over what actually happened at the Marine Terrace Condominium Owners Association meeting.

Jerry Hill, Coos Bay, said he felt Day's presentation to the Marine Terrace Condominium Owners Association was very open and above board and was discussed by the Association. He noted that Marine Terrace needs the view in front of their own property so most of the residents are aware of the importance of the view. Hill says they have spent \$4,000 on repairing car port roofs damaged by the needles and they also pay to have someone clean the carport roofs and gutters more than once a year due to the trees. Hill related that he is concerned about liability if these trees cause any damage due to wind, earthquakes or any other source. Hill said he was there when the roof blew off and it had no relation to the trees either being there or not being there. Mayor Verger asked him if the majority of the owners want voted to have six trees removed and Hill said he could not remember if the exact number of trees to be cut was mentioned. He noted that only six out of

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seventeen signed the petition against the cutting of the trees and the motion to cut the trees was passed at a legal meeting of their association and is binding according to their by-laws.

Mayor Verger said she felt the decision from the condominium owners was made at a legitimate meeting and it bothered her that most of North 3rd Court was involved in the appeal. She questioned how far can neighbors be involved in this.

Councilor McCabe said that in retrospect he would be in favor of going back and abiding by the Tree Board's decision in this matter basing this decision on the fact that one tree is leaning and the other two are close together. He stated that he doesn't feel erosion is a factor to consider.

Councilor Williams felt on procedural grounds he would have supported the Tree Board's decision and was swayed by the Association members who came to the last meeting. He was sorry that Day and Hill weren't here then as their testimony shed a lot of light on the whole situation. He feels the Council didn't have adequate information at the last meeting and he feels differently now.

Councilor Combs said communication is so important and feels there was a lack of this between all the parties involved. He appreciates the additional information provided at this meeting and would like to see a balance, especially regarding public safety issues, in this ordinance. He said he would go with the original Tree Board decision and urged the Council to review this ordinance, especially the purpose of the Tree Board. He would like to see a better appeal process put into place and feels the city can do a better job of communication.

Councilor Miller expressed regret at not being able to attend the meeting when the appeal was heard as she serves on the Tree Board and could have provided the Council with additional information. She indicated she would like to see the Council stand by the Tree Board's decision.

Mayor Verger reported that Councilor Melton, who was not present tonight, stood by the Tree Board's decision at the prior meeting.

Councilor Benetti said that after hearing the additional testimony, he is in favor of the original decision of the Tree Board. He suggested a joint work session with the Tree Board to discuss the ordinance and he feels there should be a balance between the view and the trees.

Mayor Verger commented that the Tree Board operates at the pleasure and under the direction of the Council and needs to know where they stand philosophically in regards to views and trees. She would like to revisit the Ordinance and smooth out any problems in the Ordinance. She apologized that everyone concerned was not notified in writing of the appeal, and reiterated that the Council was not trying to demean the Tree Board or take away the effort that they put into their decision.

Mayor Verger made a motion to abide by the Tree Board's decision to cut three trees. The motion was seconded by Councilor Benetti. Councilor Combs said he felt no trees in this issue have been identified as dangerous trees. It was noted that dangerous or diseased trees can be cut without permission. The question was called and the motion carried with the Mayor and all Councilors present voting aye.

### **City Attorney Report**

Paula Bechtold noted that the Tree Ordinance requires a review of the Ordinance before February and it would be appropriate to hold a work session as part of that review. Councilor Miller asked Bechtold look at ordinances from other cities before doing anything else. Bechtold said this was adopted from a model Ordinance sent to us as part of our Tree City USA program. Mayor

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Verger asked that a work session be held in January on this ordinance.

### **City Manager Report**

Bruce Meithof reported that the Bay Area Resources are holding an open house on October 24th at 320 Central in Suites 312 & 314. He advised the Council of a city wide staff meeting on November 8th and of the city awards banquet on February 4th. He reminded them that they have a memo and forms for registration for L.O.C. in their packets and asked them to please have them back to Joyce by next Monday. Meithof said he had been contacted by Alan Rumbaugh of Port of Coos Bay regarding the barge that was initially considered for part of the Boardwalk project. He asked if the city currently has a real interest in obtaining the barge. He related the following cost figures for the Council's information: The barge will cost \$1 but it will take \$30,000 to drydock it and \$70,000 for repairs to float it. He feels we have a lot of other priorities but the Council can make a decision which the Port needs to know by January. Mayor Verger said that unless their is interest now, she feels the City is not interested in the barge. There was consensus among the Council members that there is no interest in the barge.

Meithof apprised the Council that when Bill Grile resigned from the Council, three committees were left with a vacancy, and he could attend the Bay Area Enterprise Zone meeting next Friday if they desire. He feels the three committees should be covered and the Mayor suggested the council wait until after elections for permanent appointments. He noted that the next meeting of the Urban Renewal Agency will be mid-November which is after the election, but the Oregon Coast Zone Management Association will be meeting November 3rd & 4th in Newport and should be attended. Councilor McCabe said he might be able to go.

### **Council Comments**

Councilor Combs encouraged the City to work on the Empire Lakes trails paving project as soon as possible.

Councilor Benetti asked for an update on the Mingus Park project and wanted to know if we ever discussed the fish that will go back in there after the project is done and what habitat they will need like logs, etc. Meithof replied that the Mingus Lake improvement project was budgeted at \$50,000 and that was based on getting some grant funds. He reported that those grants did not come through and Jim Watson authorized \$20,000 out of Special Projects to be used for the project with \$10,000 for the block wall which is being used to preserve the bank and to correct the sidewalks, leaving \$10,000 to dredge which is not enough money to continue the dredging to six feet overall. He said a depth of four feet is needed to have fish like trout in the lake and we will have that the way it stands right now. Meithof further reported that the contractor ran into problems with the jello type consistency of the mud he was removing as it would fill up the hole when material was removed and this caused the area to be kept smaller in order to get the depth and we used what money we had available. Councilor Combs asked if we knew we weren't getting the grants when we drained the water from the lake to which Meithof replied in the affirmative and said the City did not start the project until Watson approved the use of \$20,000 from Special Projects. Meithof went on to say that we did not know what we were going to get into as far as the mud situation until we started draining it, and noted that the contractor did not start getting into solid material until about

four feet. Councilor Combs asked what grants had been applied for and Public Works Director Ralph Dunham responded that Fisheries Enhancement and Coastal Zone money had been applied for. Dunham told the Council that one of the reasons the project was done at this time is that we had a permit extension and that this is the optimum time of the year to do the draining. Combs asked how long our permit was good for and Dunham said that although our permit from the Division of State Lands runs through August of 1995, we had been contacted by the Corps of Engineers who would have jurisdiction if the project was not completed by December 1st of this year because jurisdiction changed from the time we originally applied for the permit. He related that some citizens contacted the Corps of Engineers which got them involved. Combs said he was frustrated that we are in the middle of a project and feels we should try to find the funds to complete this so that we won't have to come back to this in a couple of years and redo so much that has already been done. He would like to make every effort to do all of the work now. Dunham reviewed why this project was being done and talked about the problems with the silt. He said the primary reasons for the project were to stop the growth of the algal bloom and beautification noting that a lot of that problem has been addressed and taken care of by the aerators. He repeated that in order to have a thermal layer in the lake you need to have a depth of more than four feet which will stop algal bloom and enable certain game fish such as trout to survive in the pond. He stated that they had scoped the project to make it reasonable, but so that it would last for at least 10 years and allow some game fish to live there. He felt that the development of Choshi gardens and ponds will help the lower pond. Dunham mentioned that at the request of the Parks Commission, the rebuilding of the island to its former size was added to the project. Councilor Combs asked if the project was 50% complete and Dunham replied that the funds had been spent for repair of the East wall, repair the outfall and around \$8,500 for removal of material in the lake. He estimated that we would need approximately \$20,000 more to dredge the rest of the lake and \$10,000 to repair the South wall which can be done without draining the lake to the same level that is required to dredge. Councilor Combs said he voted for the project thinking we had full funding and permits. Mayor Verger said she was also not aware that we didn't have the grants. On being asked by Councilor Benetti, Dunham explained that while the hole was being dug, other material flowed into the hole, actually deepening more than just the hole that was dug and that some of the material will flow back into the hole when the water comes back in. Dunham said he was not sure at what the City wants to accomplish in spending additional funds, relating that when staff talked about \$20,000 accomplishing the project, it wasn't the entire project, but something that staff felt was adequate for what we were looking for. He cautioned the Council to look at the purpose of what was hoped to be accomplished before spending an additional \$20,000. McCabe questioned costs over the long haul and asked if it would be cheaper to do the rest of the project now. Benetti said his understanding was that the Lake was dying, the aerators were not doing an adequate job, the lake needed to be dredged to six feet, then the aerators would help and another aerator would be added at the other end of the lake. He felt another goal was to provide recreational fishing for the citizens. Benetti said rules change when permits have to be changed and he thinks the project should be finished. McCabe said he did remember Watson saying the funds hadn't come in and some things would not get done. Benetti expressed his opinion that the city should look for the funds and finish the job now since it would be much more costly in the future. Combs agreed that everything is there including the permits and the project should be completed now. Mayor Verger asked why the Council had not been informed that the scope of the project had changed. Dunham apologized and

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said he felt the Council was told but maybe didn't understand just what would be done in the \$20,000 project taken to the Council for approval when the grants were not obtained. He said the project then recommended by staff would repair part of the rock wall and do the needed dredging. Meithof said he thought they all felt there would be a larger hole out there, but until the water was drained and the project was under way there was no way of knowing that the mud would be like jello and keep filling in the hole as it was dug. He related that the hole was not as big as staff expected. He reiterated that we had no way of knowing that until the lake was drained and the project started. Meithof also mentioned that the project took twice as much rock as they thought it would to create the road for the equipment to get out there to do the dredging. Benetti said he feels that the same rock problem will occur again and will cost again. McCabe said he would like a firm estimate of the additional cost before making a decision on doing the rest of the project. When asked, Meithof reported that the original rock and dredging contractor are off the job site, but what has been done should last 10 years although there is no guarantee. Benetti asked if Fish and Wildlife has been contacted because people have told him we need logs and trees to support the wild fish. Dunham reported that he had been in contact with Fish and Wildlife about what is needed, but our permit is for dredging not filling with other materials. He related that he intends to work with Fish and Wildlife after this project is complete. Councilor Combs asked if Restoration Enhancement Grant Funds were applied for and Dunham responded that funds had been applied for the dredging and will be applied for again for some fish structures and actual planting of the lake once this project is complete. Councilor Benetti asked if the lake was big enough to handle fish structures and Dunham replied that this project was intended to provide the thermal layer needed by the fish. He also noted that the aerators are helping with the algae growth and another one could be added if necessary.

Mayor Verger said she read that the Mall Project will be starting after Christmas. Dunham reported that the date was set at the request of the downtown business owners so it would not impact Christmas business. Verger then asked about the interpretive signs, shrubs and the flag poles which are leaning. Dunham said most of the problems are due getting the electrical service in and as far as he knows, that problem has been resolved. Dunham related why the electrical had been a problem including things such as the difficulty in obtaining a lease from the railroad for the original design, the additional \$26,000 asked for by the contractor to move electrical in to pavilions and finally negotiating a change order which came in at an \$800 savings. He related that the lengthy negotiations took place because Crow/Clay said there would be a credit for \$8,000 but the change order came through with an additional cost \$26,000. Dunham went on to explain that the lease from the railroad would have been used for both the electrical and landscaping, but that just the landscaping may be able to be done without a lease. He clarified that the main service will be at pavilion with another service at south end of the city dock and the change order will provide more power. Mayor Verger asked when the project would be done. Dunham replied that the glazing will be re-bid in February, and he is pushing for the interpretive signs to be done by January 1st. Verger expressed her concern that the Interpretive signs are not done and the company has had the contract for a long time. Dunham said the company has been notified that the signs must be done by January 1st or we will not have money to pay for them as our grants expire.

Councilor Benetti said he would like to know more about the lake dredging and would like an estimate or update on what it would cost. Councilor Combs wants to know exactly where we are, what we hope to accomplish and the cost to have it completely done. Paula Bechtold feels we can complete the project with a change order.

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**Executive Session**

Councilor Benetti moved to go into Executive session pursuant to ORS 192.660 (1) (a) regarding employment of public officers. The motion was seconded by Councilor Combs and carried with the Mayor and all Councilors present voting aye. Attending the executive session were the mayor, all councilors present, Interim City Manager Bruce Meithof, Acting Recorder Mary Beth Holst, Fire Chief Cliff Vaniman, and members of the media.

**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 November 1, 1994.

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

**ATTEST:**

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