



# COUNCIL REGULAR SESSION

Wednesday, September 21, 2022

## APPROVED MINUTES

### MEMBERS PRESENT

Council President Doug Morten  
Councilor Patrick Birkle  
Councilor Stephen R. Topaz  
Councilor Jessica Chilton

### MEMBERS ABSENT

Mayor Rick Scholl

### STAFF PRESENT

|                                   |                                       |
|-----------------------------------|---------------------------------------|
| John Walsh, City Administrator    | Mouhamad Zaher, Public Works Director |
| Kathy Payne, City Recorder        | Sharon Darroux, Engineering Manager   |
| Lisa Scholl, Deputy City Recorder | Ed Trompke, City Attorney             |
| Jacob Graichen, City Planner      | Tina Curry, Event Coordinator         |

### OTHERS

|                  |                |
|------------------|----------------|
| Jane Garcia      | Jeanne Morain  |
| Jennifer Pugsley | Vicky Njust    |
| Linda Zahl       | Abigail Dawson |
| Brady Preheim    | Clark Vorm     |
| Richard Mason    | David Peterson |

### CALL REGULAR SESSION TO ORDER – 7:00 p.m.

### PLEDGE OF ALLEGIANCE

### VISITOR COMMENTS – *Limited to three (3) minutes per speaker*

- ◆ Richard Mason. He is confident that the Council is going to approve the contract regarding St. Helens Marina acting as the Harbor Master. All the work done by the Committee will be for not if it's not enforced. In 2018, when the Marina took on the duties of Sand Island campground, Brad Hendrickson agreed to police the Sand Island docks and City docks. Brad and Toni have kept record of violators and abandoned boats. However, the City repeatedly did not back them up due to lack of resources. He hopes the City backs up the new contract, so they don't have a repeat of what happened in the past. The Ordinance was revised with more teeth, but it still needs City support.
- ◆ Brady Preheim. He lives on Clark Street. The intersection at Clark Street and Milton Way is very dangerous. He has been in an accident there and was almost hit by a school bus yesterday. Something needs to be done. There is a hedge that you can't see around when turning on Milton Way.

Council President Morten asked if there is a sidewalk. Brady said there is not. Your car has to be 60% in the road to be able to see. His fear is that the road will go through from the development by Walmart, which will make it worse. There used to be a pole with a mirror, but it disappeared.

Public Works Director Zaher will look at it tomorrow.

Councilor Chilton asked if he has spoken with the neighbor. Brady said no.

Councilor Topaz asked if you can't see well from the other side. Brady said it's enough to see.

City Planner Graichen said this came up when Chief Salle' was here. They made it part of the nuisance section to be enforced by Code Enforcement.

## **CONTINUED DELIBERATIONS**

### **1. Appeal of Planning Commission's Denial of a 46-Lot Planned Development Subdivision Preliminary Plat located SE of the Intersection of Pittsburg Road and Meadowview Drive (Comstock)**

City Planner Graichen reported that this is a continuation of deliberations. He asked if there was any ex-parte contact since the last meeting. Councilor Birkle declared that he received a voicemail from Vicky Njust to talk about building moratoriums. He doesn't believe that the voicemail has an impact on his ability to make a fair decision. Council President Morten received a similar call. He told Vicky that he would check with Graichen and be ready to make a fair decision. Councilor Topaz also received a voicemail about it. Graichen asked if Councilor Chilton has reviewed the record and is prepared to make a fair decision. Councilor Chilton said yes. There were no objections from the audience for the Council to make a fair decision.

Graichen reviewed the history of the public hearings and request before them.

- A significant difference is the number of lots proposed. The new proposal has a 26% reduction of lots, and no lots are less than 7,000 sq. ft.
- The applicant tentatively agreed to the proposed conditions, which includes the additional fee of \$6,660/equivalent dwelling unit for the sanitary sewer issues. An inflation element is also included.
- The public record is closed.
- Talked about the 120-day rule. City government must make a decision within 120 days of the application being deemed complete. It's challenging when there are appeals. An extension was granted until October 5. This October is weird because of the LOC Conference. They want to try to honor the 120-day rule. If they make a decision tonight, he suggests they have a special meeting to adopt the final document. September 26 or October 3 are the dates he has in mind. Council President Morten pointed out that he will not be available to attend either of those meetings and asked if Mayor School could preside. City Attorney Trompke said Mayor Scholl should not preside or sign the final document since he recused himself.

Graichen reviewed the options for denial or approval.

- Denial
  - Sanitary sewer issue. A considerable amount of the conveyance infrastructure between the subject property and where it's treated at the Wastewater Treatment Plant, is above capacity now, per the Sewer Master Plan (SMP). The industry standard for capacity is .85%. According to the SMP, it is at or above capacity now. However, it is a priority three because the infrastructure does not have a known history of surcharging.
    - He reviewed SHMC 17.152.090(4) Permits Denied. Development permits may be restricted by the commission or council (i.e., the applicable approval authority) where a deficiency exists in the existing sewer system or portion thereof which cannot be rectified within the development and which if not rectified will result in a threat to public health or safety, surcharging of existing mains, or violations of state or federal standards pertaining to operation of the sewage treatment system.
    - DEQ can issue fines for surcharging in certain events.

- Another thing to consider, outside of the review of this subdivision, is that staff queried the Council in April about the SMP. The consensus was to try to not halt development and charge another fee to help compensate.
- Approval
  - As mentioned at the August meeting, the proposal included an estimated charge of \$6,600 that was proportional to the amount that this development would present to the system. The applicant was okay with that.
  - They know the sewer problem is widespread. This brings them to a question of moratorium law, which requires notice to the State. Right now, there is no pattern or practice. This will help set a framework of how they look at developments. Maybe a denial will hold up. At some point, they will have to do something more. The extra fee is not ignoring the issue. It gives a proportional start.
  - In talking with legal counsel, if Council does approve it, there are conditions in the record. They recommend adding another condition that the owner, developer, and subsequent buyers will indemnify the City from any cost, fines, or penalties arising from or associated with overflow or discharge from the sanitary sewer system, until the system is upgraded as contemplated in the plan. That is assuming the Council is considering approval.

Councilor Topaz asked how old the sewer system is. Engineering Manager Darroux said it is about 50 years old. Councilor Topaz asked if there has been a major water episode during that time. Darroux said there was an overflow on Sykes Road. The model shows that line is maxed out. If you keep adding to it, it will overflow. Downtown is priority one because it does overflow. Councilor Topaz said it has to be redone and capacity upgraded. They need to triple the size for future development. Darroux said it's an eight-inch line now and recommended to be upgraded to a 15-inch line.

Council President Morten asked if there is a plan to upgrade Sykes Road and the infrastructure in the Transportation Systems Plan. Graichen said yes. Public Works Director Zaher pointed out that the Transportation Systems Plan will be updated soon as well. Council President Morten went on to ask if that would include a larger trunk line on Sykes Road. Darroux said the 15-inch line considers development of all the property within the Urban Growth Boundary (UGB).

Councilor Topaz asked about the timeline to increase it to a 15-inch line. Darroux said they are securing funds now. Zaher hopes to see the upgrade within the next three years. They did look at upgrading all three trunk lines at once. Darroux added that the DEQ loan application includes the two priority one basins and the Sykes Road basin.

Councilor Topaz asked how many years it could potentially take to fully develop the subject property. Graichen said it could be completed in a three-year period if they did it all at once. Council President Morten pointed out that it's the same amount of time as upgrading the sewer line.

Councilor Topaz suggested that it becomes safer if they delay it two years. It would be a moratorium to ensure the Sykes Road line is in place.

Councilor Chilton asked how long the overflow condition would last. Graichen said that would be only until the system is upgraded.

Graichen talked about testimony received. It's common to have testimony about traffic. He talked about the street connections. The Code is clear about connecting streets.

Graichen said the Council needs to decide if they're going to deny it, based on the one standard, or approve it with conditions. The most recent condition added was the indemnification.

Councilor Topaz asked what the possibility is of there being enough homes to afford the indemnification if they approve it. If they get heavy rains, it could blow the lines out before they're upgraded. Graichen

said it's not a matter of a sum of money. It's a matter of this subdivision enacting a legal case against the City in the event of a surcharge. It's an extra layer of protection for the City allowing the development, knowing there is potential. Councilor Topaz is worried about how it will be paid for when it's only partially developed. Graichen said the fine from DEQ would be the City's burden. It's more to protect the City against individual suits. Councilor Topaz asked how they can justify the timing of the development. Graichen said the Planning Commission discussed allowing the subdivision to be completed, but not allowing building permits to be issued until the sewer is in. It may be difficult to obtain bank loans. It's conceptual. Once the lots are created, there could be multiple owners. They talked about the possibility of adding a notice to the deed that there is a delay on building permits.

Councilor Chilton reminded everyone that this sets a standard for all future development. She is not comfortable adding a lot of layers.

Council President Morten said it takes about a year to develop prior to building. That's a year moratorium already in place.

Council President Morten asked for the staff's recommendation. Graichen said because of the moratorium issue, having a significantly delayed plan that put them here, and setting a precedent for other developments, it is probably safer to approve it. Sometimes the fines are the cost of doing business. The needle leans towards approval with the conditions. It's not just this development, there are several others. At some point, someone with good legal counsel will say they can't do this. He's thinking about all the proposals he's aware of.

Councilor Topaz asked if the other developments depend on sewer lines that don't have sufficient capacity. Graichen said yes, it's widespread. They know there are some areas that have a pattern of surcharging, so they'll have to consider it differently. Moratoriums are brutal. It will be politically sensitive, and the room will fill up with people in favor and opposed. Hopefully, it's upgraded before there is a surcharge running down the street.

Councilor Topaz asked if DEQ could tell them not to build anymore until the line is upgraded. Graichen is not sure they can impose that. Although, they may be able to impose fines until it's done.

Councilor Topaz said with the I&I project, the EPA said they can't dump their sewer in the river, and they had to have a stormwater and sanitary sewer, or they would come in and do it for them. Could that happen? Graichen said they have separate systems now. Darroux is not aware of that. It would likely just be a fine. DEQ is aware of the wastewater issues. Councilor Topaz said this is a physical problem due to the sewer system. Graichen agreed.

Council President Morten is looking at both sides. There are a lot of issues. If they deny it and don't have a good reason, are they vulnerable for lawsuits from the developer? Graichen said it's possible that it gets appealed to LUBA, the City loses to LUBA, and then LUBA could require the City to pay the opponents attorney fees. They want to make sure the basis for denial is clear and objective. He read the permits denied standard, which directly correlates with the Master Plan. Without a significant history of surcharging, at what point does it tip? Graichen reviewed the sewer line map.

Councilor Chilton agrees with the staff recommendation. The developer has increased the lot sizes based on requests and a plan to accommodate the wetlands.

Councilor Topaz is afraid of denying it and afraid of the sewer line physical problems. They have drastically underrated the danger due to the changing environment.

Councilor Birkle believes the Planning Commission made the correct decision at the time, based on the plat and sewer system deficiency. Since then, changes have been submitted, he has met with staff, and the Master Plan is going to be reprioritized. At the last meeting, one member of the Planning Commission gave a neutral position based on changes. This is a decision that can be rectified. He is inclined to vote

to approve the plat with the conditions of the sewer surcharge, condition for the developer and subsequent buyers to indemnify the City, and they begin work on improving the system as soon as possible.

Council President Morten wants to make certain the sewer line is repaired as soon as possible to ensure Sykes Road is safe. Staff's recommendation is strong. They are the professionals. Council must make the decision as non-professionals. He stands behind staff. His vote is to approve.

Graichen said the easy motion is to approve the revised conditions from the August 17, 2022, meeting, and add the indemnification language. Councilor Birkle expressed his reluctance to vote until he sees the conditions in writing.

**Motion:** Motion made by Councilor Birkle and seconded by Councilor Chilton to approve the preliminary plat subdivision based on the revised conditions of the August 17, 2022, meeting, and the additional condition that the owner, developer, and subsequent buyers will indemnify the City from any costs, fines, or penalties arising from or associated with overflow or discharge from the sanitary sewer system until the system is upgraded as contemplated in the plan.

Discussion.

Councilor Birkle acknowledged the sincere and heartfelt comments received from community members. He believes their sincerity and the concerns about the potential impact. However, they must base their decision on the Code. He also thanked staff for their guidance.

Councilor Topaz finds it upsetting that he's considered not knowledgeable in technical affairs, especially engineering and sanitary sewers. It's a gravity job and favoring more caution than not. He wants to see the development there, but until the sewer system is in adequate condition, he can see more damage to the present part of the community. Based on what they've seen in recent extreme weather patterns, he is very afraid of what can happen. That is why he is opposed to it. He is worried about the physical measurement system.

Council President Morten respects his opinion and everyone else's. He's fearful of an appeal to LUBA. He's also fearful of Councilor Topaz's concerns. Getting in hot water with LUBA is a tough place to be. Attorneys can make it really tough for them. That's why he is following staff recommendation.

**Vote:** Yea: Council President Morten, Councilor Birkle, Councilor Chilton; Nay: Councilor Topaz

Graichen said they need to set a date for the special meeting. Trompke does not think it's critical that it be done this week. Even without Council President Morten's vote, based on this vote it would be a two to one vote for approval. He suggested asking the applicant if they would extend the timeline until he returns.

Graichen asked the applicant if they are willing to extend the 120-day rule and wait until October 19 for the decision. After discussing it with his client, the applicant's attorney, David Peterson, agreed to extend the 120-days to October 19. Council President Morten apologized for not being available sooner. Graichen requested the extension be provided in writing.

## RESOLUTIONS

### 2. **Resolution No. 1966:** A Resolution to Establish Water, Sewer, and Storm Drainage Utility Rates, Charges, and Administrative Rules

Council President Morten read Resolution No. 1966 by title. **Motion:** Motion made by Councilor Topaz and seconded by Councilor Chilton. **Vote:** Yea: Council President Morten, Councilor Birkle, Councilor Topaz, Councilor Chilton

**APPROVE AND/OR AUTHORIZE FOR SIGNATURE**

3. Agreement with St. Helens Marina LLC for Harbor Master Services at City Docks and Waterways

**Motion:** Motion made by Councilor Birkle and seconded by Councilor Chilton to approve '3' above. **Vote:** Yea: Council President Morten, Councilor Birkle, Councilor Topaz, Councilor Chilton

4. Separation and Release Agreement with Matt Brown

**Motion:** Motion made by Councilor Birkle and seconded by Councilor Topaz to approve '4' above. **Vote:** Yea: Council President Morten, Councilor Birkle, Councilor Topaz, Councilor Chilton

**APPOINTMENTS TO CITY BOARDS AND COMMISSIONS**

5. Appoint Ellen Jacobson to the Library Board

**Motion:** Motion made by Councilor Topaz and seconded by Councilor Chilton to approve '5' above. **Vote:** Yea: Council President Morten, Councilor Birkle, Councilor Topaz, Councilor Chilton

**CONSENT AGENDA FOR ACCEPTANCE**

6. Library Board Minutes dated August 8, 2022
7. Parks and Recreation Commission Minutes dated July 11 and August 8, 2022
8. Planning Commission Minutes dated August 9, 2022

**Motion:** Motion made by Councilor Topaz and seconded by Councilor Chilton to approve '6' through '8' above. **Vote:** Yea: Council President Morten, Councilor Birkle, Councilor Topaz, Councilor Chilton

**CONSENT AGENDA FOR APPROVAL**

9. Amended Finance Director Job Description
10. Accounts Payable Bill Lists

**Motion:** Motion made by Councilor Topaz and seconded by Councilor Birkle to approve '9' and '10' above. **Vote:** Yea: Council President Morten, Councilor Birkle, Councilor Topaz, Councilor Chilton

**WORK SESSION ACTION ITEMS**

None

**COUNCIL MEMBER REPORTS**

Councilor Topaz reported...

- Youth Librarian interviews will be held next week.
- It was disappointing that the trolley was not operating last week. He hopes to see it running soon.
- Is the City's new boat here? Walsh responded that it is still being reviewed by the Coast Guard.

Councilor Birkle reported...

- Steve Toschi spoke about House Bill 3115 and being proactive. It will take effect July 2023. He is pleased with how the Planning Commission is moving forward on it. It will help provide insight and background.
- There are two upcoming Planning Commission vacancies due to retirement of two long-time members, and possibly a third, depending on the election results. He encouraged everyone to spread the word and get more people involved. Graichen added that they have a pool of applicants from the last round who are still interested.
- He walked through Spirit of Halloweentown on Sunday. It looked to be a nice, soft start.

Councilor Chilton reported...

- Getting re-oriented after being on maternity leave. She is two months old and super cute.
- The League of Oregon Cities (LOC) Conference is coming up. She is very excited about attending, learning, and networking.
- She is excited about Spirit of Halloweentown.

Council President Morten reported...

- He used first names tonight. It feels more like family.
- Councilor Birkle mentioned Steve Toschi reporting on House Bill 3115. He hopes that Steve attends that session at the LOC Conference. Those sessions can become an item you might vote for. It makes sense to listen to his arguments.
- The last Parks & Recreation Commission meeting was interesting. Deliberation lasted about an hour about the Scappoose Bay Watershed agreement. There was a lot of talk about certification of spraying and if volunteers could do that. They voted unanimously that Scappoose Bay Watershed has the expertise in spraying techniques. He agrees with any kind of work they do. Hopefully, they conclude that things are okay the way they are.
- Work was done in Dalton Lake Nature Preserve for salmon restoration. It was all inclusive to keep the beavers in place and building a bridge over the waterway. It's a good time to see it while it's dry. They replanted and have done good work. Access is near the Water Filtration Facility.
- He would like to move forward on a Land Acknowledgement Statement for the city. It acknowledges what happened prior to the white man coming and developing the land. Do they pay respect to what happened? How do they do that? He is working on that now with a different board. It has enriched his life to learn about the indigenous people who were here before them. There is no history of it. He recently found out there is a burial ground under the new development by the old hospital. Arrow heads and other artifacts were found at the mouth of Milton Creek that dumps into the slough. Archeologists did a massive dig there and found artifacts that ended up in a Portland museum to be safeguarded. This is important. The canoe is what brought this to mind. He would hate to see the canoe destroyed and would like to see it pay homage to the history. A statement of respect is in order, and suggested it be done with the Waterfront Development.

Councilor Topaz added that Nob Hill was a past lookout for tribes. Council President Morten said the Chinook Nation was huge on the Columbia River. Walsh added that the Riverwalk project will include interpretive signage. Council President Morten would like to see the canoe in a proper display there.

#### **MAYOR SCHOLL REPORT**

Reported at the Work Session.

#### **OTHER BUSINESS**

#### **ADJOURN – 9:02 p.m.**

Respectfully submitted by Lisa Scholl, Deputy City Recorder.

ATTEST:

/s/ Kathy Payne

Kathy Payne, City Recorder

/s/ Doug Morten

Doug Morten, Council President