



COUNCIL PUBLIC HEARING

Wednesday, October 18, 2023

APPROVED MINUTES

MEMBERS PRESENT

Mayor Rick Scholl
Council President Jessica Chilton
Councilor Mark Gundersen
Councilor Russell Hubbard
Councilor Brandon Sundeen

STAFF PRESENT

John Walsh, City Administrator
Kathy Payne, City Recorder
Lisa Scholl, Deputy City Recorder
Jacob Graichen, City Planner
Jenny Dimsho, Associate Planner
Suzanne Bishop, Library Director
Crystal King, Communications Officer
Bill Monahan, Contracted City Attorney
Tina Curry, Contracted Event Coordinator
Brian Greenway, Police Chief

Jose Castilleja, Police Sergeant
Evin Eustice, Police Sergeant
Doug Treat, Police Sergeant
Matt Smith, Police Corporal
Dylan Gaston, Police Detective
Jeremy Howell, Police Officer
Jamin Coy, Police Officer
Adam Hartless, Police Officer
Kolten Edwards, Police Officer
Brandon Haflich, Police Officer

OTHERS

Steve Topaz	Jennifer Shoemaker
Brady Preheim	Jane Garcia
Steve Toschi	Adrienne Linton
Michelle	Scott Jacobson
B. Gaston	Debbie Parsons
Hayley Starkey	Judy Thompson
Matt R.	Jesse Lagers
Iris Wu	Brian Varricchione
CCMH	Alex Tardiff
Catherine Hager	Tony Fleming
Cody Feakin	Jim Coleman
Al Petersen	Shauna Stroup-Harrison

Adam St. Pierre	Peter Hautt
Thomas Peck	Kathy Thomas
Mary Anne Anderson	Suzie Dahl
Jen Massey	Leila Wilson
Sabrina Moore	Allison Anderson
Brianna Boice	Todd Jacobson
Jeff Humphreys	Arthur Leskowich
David Lintz	RLT
Matt	James Shober
Sid Hariharan	Eddie Dunton
Jerimy Kelly	Kai Cater

OPEN PUBLIC HEARING – 5:30 p.m.

TOPIC

- 1. Appeal of Planning Commission Decision on Conditional Use Permit (CUP.4.23), Sensitive Lands Permits (SL.4.23 - floodplain and SL.5.23 - wetlands), and Sign Permit (S.14.23) for New Police Station proposed to be located at the Southeast Corner of Old Portland Road and Kaster Road Intersection (City of St. Helens)**

City Planner Jacob Graichen covered preliminary matters. Mayor Scholl turned it over to Attorney Bill Monahan to address conflicts of interest and bias. Monahan explained that potential conflicts of interest

are when someone may have a financial conflict of interest. Actual conflicts of interest are when there is certainty of financial benefit or detriment if the person participates in the decision. Potential conflicts of interest need to be declared, and the person can decide whether to participate. However, actual conflicts of interest must also be declared and the person must step out of participating in the proceedings.

Mayor Scholl pointed out that Councilor Hubbard was on the Planning Commission when they heard this request. Monahan explained that is not an automatic conflict of interest, unless he made a declaration at that time. Conflicts of interest are purely financial related. If he's not able to participate and keep an open mind with the new information heard tonight, then he would not be able to participate because of a bias. This is a de novo hearing, which is brand new.

Councilor Sundeen would like to recuse himself. A lot of people have contacted him about this request.

Attorney Peter Watts, representing the City in the appeal, addressed relevant cases on bias. He is not aware of any cases in Oregon where someone had an actual bias. If they are willing to consider the evidence, change their mind about a matter, and learn something new, then they don't have a bias. It's normal to hear stuff as an elected official. If they're not willing to change their mind, then they should recuse yourself.

Mayor Scholl declared that he would keep an open mind and listen to the facts in this hearing.

Councilor Sundeen declared that this is new for him and he appreciates the clarification.

Council President Chilton, Councilor Gundersen, and Councilor Hubbard all declared they are willing to hear the new evidence.

There were no declarations of ex-parte communication or site visits.

Graichen asked if there was anyone in the audience who wanted to object to the ability of a Councilor to make a fair decision.

Steve Toschi objects to Mayor Scholl and Council President Chilton participating. A copy of his objections is included in the archive packet. In summary, they both declared that they are accountable for the police station's subject location and voted for Resolution #1986, which he feels is a gag law. He also referred to the last hearing and Mayor Scholl's statement made about the delivery of dirt being for the Industrial Business Park, which he does not agree with. Mayor Scholl objected to Steve. Steve continued to say that Councilors Sundeen, Gundersen, and Hubbard are the only ones who can make a fair decision. Anyone who has been involved in the previous land transaction needs to declare a bias. This decision affects the lives of human beings.

Jen Massey is thankful Councilor Hubbard was selected for the position. However, she does have a concern with his ability to make a fair decision since he already voted against it.

Brady Preheim also objects to Councilor Hubbard. He made the motion in the Planning Commission meeting to deny the application. He is a great addition to the Council but should recuse himself in this case. Mayor Scholl and Council President Chilton have been clear about their support of the police station and the subject location. It is not appropriate for them to make a decision. He objects to everyone except for Councilors Gundersen and Sundeen to make a fair decision.

Council's response to challenges:

Mayor Scholl addressed what has been said about him and explained the need for dirt on St. Helens Industrial Business Park. He is willing to listen and make a fair decision with the facts before him.

Council President Chilton is willing to consider new evidence and will vote.

Councilor Hubbard talked about the Planning Commission looking at the building in the flood plain. Federal law says you cannot put a critical facility in a floodplain. Although, they want to build above it.

Hearing that Kaster Road and Old Portland Road can get over 4.5 feet of water making the police station inaccessible, he determined that it's not the right location. If there are no other places, then it can be done. He still thinks he can make a good judgement.

Motion: Motion made by Councilor Gundersen and seconded by Council President Chilton to not disqualify Mayor Scholl. Yea: Council President Chilton, Councilor Gundersen, Councilor Hubbard, and Councilor Sundeen; Abstain: Mayor Scholl

Motion: Motion made by Mayor Scholl and seconded by Councilor Gundersen for Council President Chilton to be a voting member. Yea: Mayor Scholl, Councilor Gundersen, Councilor Hubbard, and Councilor Sundeen; Abstain: Council President Chilton

Motion: Motion made by Council President Chilton and seconded by Councilor Gundersen for Councilor Hubbard to be a voting member of this decision. Yea: Mayor Scholl, Council President Chilton, Councilor Gundersen, and Councilor Sundeen; Abstain: Councilor Hubbard

Graichen went on to present the staff report, a copy of which is included in the archive packet for this meeting. Each time a decision is appealed, you dig deeper because you have more time, which means there is new information to share. A few highlights were:

- Review of area maps and Code criteria
- Building footprint is not within the 100-year floodplain
- Review of flood boundaries versus the actual elevations. The largest Milton Creek flood was in December 1955.
- Review of the proposed sites
- The officers are the boots on the ground. They have the opportunity to testify. If their testimony pertains to the Code and what has been presented, it will strengthen the record if it's appealed.
- Officers prefer the site for access purposes and future expansion
- Planning Commission suggested the secondary access road be 24 feet wide in case of emergency
- Council needs to consider if this is a good location

PUBLIC TESTIMONY

Applicant/Applicant Representative

- ◆ Peter Watts. Reported that he practices Municipal and Land Use Law. He has reviewed both the Planning Commission and City Council staff reports. When he first read the Planning Commission staff report, he was very confused. The FEMA flood maps are the only ones they are allowed to use. The maps were most recently updated in 2010. The portion of the site where the building envelope is, is not in the floodplain. In Oregon, there is a Structural Specialty Building Code. Section 1604.5 classifies police station buildings but not property, as Risk Category IV, Essential Facilities. They are looking at pre-dirt on the site, outside of the floodplain, for the police station itself.
- ◆ Police Chief Brian Greenway and Detective Dylan Gaston, Police Association President. Presented a request to overturn the Planning Commission decision. Greenway is here to speak about leadership.

Steve Toschi objected. The testimony should be directed towards the applicable criteria.

Greenway thanked the officers who are here on their own time. These officers are the ones who will be impacted by the decision. The current station is not seismically sound. They know when a flood is coming but typically don't with an earthquake.

Steve Toschi objected again. Watts pointed out that they are not in court and do not get to object to other people's testimony. Monahan explained that the Mayor has the ability to create time, place, and

manner limitations on the presentations. They have not put a time limit on staff identifying the application. The City Planner did a nice job of reviewing the background. They are now in the hearing format where they are taking public testimony. He has not heard any time limitations, but it is inherent to the applicant, being the City, to meet the burden of proof to show that all the criteria have been met. Their decision must be based on criteria, but if other testimony is given that is freedom of speech if the Council is willing to allow it without placing time restrictions. Graichen added that he was focusing on the Conditional Use Permit standard and paraphrasing it when he mentioned that the site is suitable.

Greenway went on to say that the current conditions are not acceptable. The existing building is about 2,200 sq. ft. The average American home is 1,800 sq. ft. The average living room is 150-380 sq. ft. They have 23 employees in a 300 sq. ft area. The proposed station is for the community. He gave a couple examples of how the existing station is failing the community. Working out of a trailer with no running water or restroom, he walked across the parking lot in a downpour and encountered an elderly gentleman in a wheelchair getting soaked. He came to make a police report but was unable to get around the flagpole and into the station because it isn't ADA accessible. In another instance, a young lady came to report a violent rape. They had to take her into a classroom with a duct taped door entry, full of ballistic helmets, and try to comfort the victim of heinous crime. It was unacceptable. He does not want the focus to be on anything else tonight other than serving the community. They need a new police station. Photos of the existing facility were shown. He repeated how unacceptable those conditions are. This is one of the most important decisions the City will make for residents and he's imploring the Council to approve the permit. The ad-hoc committee looked at 10 sites in the city and narrowed it down to three sites. Location is of the utmost importance. They just drew in approximately 20,000 visitors for the Halloween parade and pumpkin lighting. The building needs to be on display so people coming into the community feel safe. Some of the locations they looked at were hidden and they didn't want that. The site is already owned by the City and allows them the ability to grow. He is very proud of the officers. They selected this location. There is over 200 years of law enforcement experience in the police department, four active shooter events, and hundreds of critical incident events that the officers have successfully mitigated. The location also gives them multiple ways to traverse the City if there is a train. There are officers in the room who responded to the retirement home fire last year. The fire department took 33 minutes to get to the retirement home fire, but police got there immediately and saved lives. The officers are not being selfish. They are thinking ahead to the future. The current location is not going to work. If there is a catastrophic incident, the officers will be in the community and not working from the station. He spoke with officers who were here during the 1996 floods and they were able to get through that intersection. There are upcoming retirements and they are going to have to recruit new officers. Housing is hard to come by out here. He has 23 officers and 18 lockers. They need cops to keep the community safe. This will help with recruitment. Officers will leave if this doesn't pass.

Detective Gaston agreed with Greenway. Council made a unanimous decision about the location earlier. Officers agree with the centralized and accessible location. This decision was not rushed and was made with careful consideration of all the aspects. Subject matter experts have evaluated every aspect of the new station, including the location, deeming appropriate and feasible. Over the last two years, they have shown that the facility can be built there. He urges Council to not let a small group of people deter them.

- ◆ Ralph Henderson, Mackenzie Civil Engineer and Thomas Peck, Mackenzie Architect. There are additional colleagues on the call if any questions come up.

Thomas reviewed the location:

- Provides an optimal response location
- Allows for future growth and expansion
- Secondary access serves as ingress and egress if needed
- Building is outside the 100-year flood plain and outside the wetlands
- Minimal impact to the wetland buffer

- Facility was designed with input from the community as a welcoming building

Ralph reviewed the site plan map and the 100-year flood map. The building and secure parking lot are both out of the 100-year floodplain. It will be built 2.2 feet above the 100-year floodplain.

Council President Chilton asked if the flood zones will change as maps are updated. Ralph said they must rely on the current maps. Graichen added that the City first adopted the 1988 maps and then the 2010 maps. Ralph and Thomas confirmed that the secondary access road is out of the 100-year and 500-year flood zone. The finished floor elevation of the building is also raised above the 500-year FEMA floodplain.

Peter confirmed that the secondary access road is outside the floodplain. It would be difficult to widen from 20 to 24 feet because of a basalt rock shelf. If they tried to go the other way it would be close to wetlands. If they choose to approve the request, he suggests they define critical facility consistent with the Oregon Structural Specialty Code Section 1604.5, which classifies the police station building, but not the property, as an essential facility. If they're not comfortable with that definition, they could add a condition that the engineers remove anything that is not natural from the floodplain area. If they don't want this to be the site for the facility, they could agree with the Planning Commission. However, he pointed out that the Planning Commission was looking at very different data than the Council is looking at this evening. He addressed the site selection. Different cities prioritize different criteria. Weight was added to some categories and taken away from others. The subject site became number one. In all the cities he represents he sees how hard it is to attract and retain officers. The current police station sends a message to first responders about whether the community supports them or not. This facility makes good sense. If they define critical facility consistent with the State's Structural Specialty Code, they don't have to make findings that there are no other facilities. The 2010 FEMA map is the only data they are allowed to use. Peter reviewed the conditions of approval and thought most were prudent. A few suggested changes are:

- 2.a.iv., "The FDC along Old Portland Road shall be moved to Kaster Road, near the new driveway location, which is outside of a flood prone area and accessible by the secondary access."
- 2.a.xiii, applicant proposes to delete this condition as existing non-compliant signage has been removed.
- 2.a.xiv, "The proposed project shall include a plan for a future pedestrian connection to either Kaster Road or Old Portland Road. The pedestrian connection shall be construed when funds become available."

Discussion of what the definition of "critical facility" includes.

Mayor Scholl clarified that the facility is not in the 100-year floodplain, even pre-dirt. Peter said yes.

Mayor Scholl talked about the original staff report being very different. Peter said there was a lot of confusion about the maps and which ones were required. In addition to that, there was a lot of speculation and community concern that they were trying to be responsive to. No disrespect to staff, but once he comes in and tells them what they're legally required to do they cannot speculate with maps. He feels very comfortable with this.

Mayor Scholl informed those giving testimony that they have three-minutes, and they must be the speaker of those three-minutes. Steve Toschi objected.

In Favor

- ◆ Doug Treat, St. Helens Police Graveyard Sergeant. He is in favor of the building and location. He has been here 10 years, first was 1996-2002 and then again after he retired as a Lake Oswego lieutenant. He works with outstanding officers. The officers have such a good reputation that they could go anywhere in the state. Out of 100 applicants, they only take 1%. When he applied in 1996, there were over 200 applicants. Their last interview process had 13 people. They cannot

afford to lose anyone. The current facility is horrible. He gets dressed in the parking lot so his officers can use the facility. The proposed site is central to anywhere they need to go. It will create crashes if they move to a highway location. Day shift received a call reporting a man with a gun at the courthouse today and they were there immediately because they were already out on the road. Even where they are right now, they have to be more cautious traversing residential neighbors when they receive calls of theft in progress at Walmart. He encouraged Council to approve the request. They need the new building for the officers and location for the community.

- ◆ Kolten Edwards, St. Helens Police Officer. He is not in uniform because it's one of his first days off this month. They are lucky to have a room full of smart people here tonight. He travels the Old Portland Road and Kaster Road intersection more than any area in the city. It's a key location with higher speeds and fewer pedestrians. The old hospital lot and Pittsburg Road are both too far out of the city. They are often at the Kaster Road intersection for calls at the bars, park, and apartments. The interview areas in the police station are not suitable and it's embarrassing. He loves this city and grew up here. It needs to happen and happen soon.
- ◆ Adam Hartless, St. Helens Police Officer and citizen. He agrees with the proposed police station location. Location is key to safely and promptly traversing the city. The current station is dilapidated. There are holes in the walls and wires running everywhere. It's more likely that the building will fall in on its own than a flood happening. He encouraged Council to listen to the experts. He pointed out that he's a big guy and his vest does not even fit in a locker, so he has to change at home and then cover up so people don't know where he lives. The building is not beneficial for retention and recruitment. He worked with the Washington County Sheriff's Office last summer and they put lawn chairs in the yard so they didn't have to come into the building.
- ◆ Jennifer Massey. She encouraged Council to look at the whole picture and ramifications of not building the proposed police station. They should look at only the facts and not personal opinions. Maybe all the procedures were not followed but they need to move on since they already have the loan and location. They heard tonight that the facility is not in a floodplain. If something happened, the officers would not be sitting in the station. They are going to be out in the field. They can create a command post wherever they go. Comments against building the police station there should be discredited as it appears there were plans from 2012 to build residences there. In 2003, there was support from the Planning Commission to put a homeless camp in the floodplain. She is disgusted that they would consider putting homeless people there but not a police station.
- ◆ Adam St. Pierre. He is in the field of electrical work and has worked at many police stations. He has never seen electrical work like what is shown in the pictures of the St. Helens Police Station. There is a need for a new police station.
- ◆ Drew Layda. It's good to see the additional information released. There's another law enforcement facility up the street within the 500-year floodplain. The contractors brought in have done an excellent job planning around the floodplain. There are almost all pros and no cons to building a new police station.

Neutral

- ◆ Shauna Stroup-Harrison. She is disheartened by the lack of foresight when it comes to working within the limitations of land and topography in the community. The floodplain has existed for a long time. She continues to attend meetings where wetlands and floodplains are glazed over.

Lifetime residents here would be aware of how many times that area has flooded. In Vernonia, they build with extensive foundations. Is that an option here? It seems negligent to not have prepared for accommodating flood zones from the beginning. She toured the current police facility and agreed a new police station is needed. As tourism appears to be at the forefront, they must increase safety. She hopes they take into consideration how important adequate policing is to the safety and livability of a community.

In Opposition

- ◆ Robin Toschi. She is not speaking against the police or the need for a new police station. Speaking to the legal analysis of current laws, St. Helens Municipal Code 17.46.040 says, the construction of critical facilities shall be to the extent possible located outside the special flood zone, and that's where this is. The SFHA shall have the lowest flood elevated at least three feet above the base flood elevation to the height of the 500-year flood zone. Measures should be taken to ensure toxic substances will not be released into the flood waters. She does not believe the City can avoid the requirements of SHMC 17.46.040, which is also why the Planning Commission voted against it. There are other sites available they can consider for a police station, so the City now has the burden of proving there are no alternative sites. The Conditional Use Permit should be denied for that reason. They must protect human life and health, minimize expenditure of public money and costly flood control projects, minimize the need for rescue and relief efforts, and minimize damage to public facilities. She is pro police, but the laws on the books now are what they need to consider.
- ◆ Steve Toschi. The law says if there's any other facility, it should be chosen. They are talking about human life, specifically people dying in a flood and police being unable to get to them. If there was a 100-year flood, the site would be completely under water and police would be completely inaccessible. He reviewed the criteria of 17.46.050(6) Critical Facility, "Construction of new critical facilities shall be, to the extent possible, located outside the limits of the special flood hazard area..." Public safety facility includes the site, improvements, parking lots, greenspace, sidewalks, and buildings associated. The City has known about this problem since 2020. Matt Brown directed Mackenzie to proceed even after being warned that it was in a flood zone. They should deny the application and look at other available sites. If it's appealed, it will be denied by LUBA.
- ◆ Brady Preheim. Two of the ad-hoc committee members were on the Planning Commission and stated they were removed when they objected to the location. He suggested Council talk to the attorney about the dirt that was moved to the property and it being done corruptly. Chief Greenway talked about 23 employees being at the police station. Brady argued that there are never that many. The police station is closed to the public. Staffing is the priority. Why build it to not staff it? They need more police and less buildings.

There was a disturbance of Zoom callers saying inappropriate and derogatory statements.

Rebuttal

Peter Watts addressed some of the concerns addressed.

- SHMC 17.46.020(8), "Critical facility means a facility for which even a slight chance of flooding might be too great. Critical facilities include, but are not limited to, schools, nursing homes, police, fire and emergency response installations, and installations which produce, use or store hazardous materials or hazardous waste." The definition does not include what portion of the site would be considered the critical facility, which is why he asked that Council clarify that the definition is consistent with Oregon Structural Specialty Code Section 1604.5, which classifies

police station buildings but not property. Council is entitled to discretion in the interpretation of the Code.

- SHMC 13.30 is not a Land Use Code, it's for funding. Funding includes anything site specific. They need to have clear and objective standards.
- The building is the most important thing to keep people safe. It is far less critically important to the health and safety of people to have grass or landscaping underwater at a lower elevation than the building. They have every reason to believe the building will be dry. It's a couple feet above the floodplain.
- The secondary ingress and egress is outside of the floodplain.
- He does not represent Mackenzie. He was not involved in the process. He was contacted three weeks ago by the City Administrator and chosen to represent the City because he considers this to be a critical facility.

CLOSE PUBLIC HEARING – 8:19 p.m.

Respectfully submitted by Lisa Scholl, Deputy City Recorder.

ATTEST:

/s/ Kathy Payne

Kathy Payne, City Recorder

/s/ Rick Scholl

Rick Scholl, Mayor