

**CITY OF SCAPPOOSE
REGULAR CITY COUNCIL MEETING
NOVEMBER 21, 2011 AT 7:00 P.M.
33568 EAST COLUMBIA AVE
SCAPPOOSE, OREGON**

Mayor Burge called the City Council Meeting to order at 7:00 p.m.

Flag Salute

Attendance:

City Council Members:

Scott Burge	Mayor
Jeff Bernhard	Council President
Donna Gedlich	Councilor
Judie Ingham	Councilor
Larry P. Meres	Councilor
Jeff Erickson	Councilor
Mark Reed	Councilor

Staff:

Jon Hanken	City Manager
Doug Greisen	Police Chief

Press:

Chelsea Bowen	The Chronicle
---------------	---------------

Cindy Phillips	Legal Counsel
----------------	---------------

Excused: City Recorder Susan Reeves

Approval of the Agenda

Councilor Ingham moved and Councilor Erickson seconded the motion to approve the agenda.

Motion passed (7-0). Mayor Burge, aye; Council President Bernhard, aye; Councilor Gedlich, aye; Councilor Ingham, aye; Councilor Meres, aye; Councilor Erickson, aye and Councilor Reed, aye.

Public Comments

Mayor Burge asked if there was anyone here tonight who would like to comment on anything that is not on the agenda.

Someone from the audience replied she would but the attorney isn't here yet (very hard to hear).

City Manager Hanken replied he will say this for the record that Mr. Leahy has filed litigation likely to occur or a tort claim. He explained to Council you can listen to his comments but he would advise Council not to respond to anything he says.

Councilor Gedlich asked about Legal Counsel.

City Manager Hanken replied she will be coming.

Councilor Ingham asked if Council wants to amend the agenda to accommodate these people once legal counsel gets here. She asked do you want to move public comments to after old business?

(Very hard to hear the motion)

Councilor Gedlich moved and Councilor Ingham seconded the motion to move Public Comments to the end of the agenda. Motion passed (7-0). Mayor Burge, aye; Council President Bernhard, aye; Councilor Gedlich, aye; Councilor Ingham, aye; Councilor Meres, aye; Councilor Erickson, aye and Councilor Reed, aye.

City Manager Hanken stated Legal Counsel just arrived.

Mayor Burge stated we are going to go ahead and have the public comments now.

Legal Counsel Cindy Phillips stated to Council that she would like to advise them about something; the lady up here that is going to be speaking to Council is the attorney for Mr. Leahy and she would direct Council at this point and time that they can listen to public comments but if you have any questions or need legal advice they should do that in executive session.

Councilor Gedlich asked Legal Counsel Cindy Phillips about the book that Mr. Leahy and his attorney handed out to Council ~ are they allowed to read it? (copy of the book is filed in Tort Claim file)

Legal Counsel Cindy Phillips replied she would ask that Council merely listen to comments at this point and time and give her a chance to check over what this is. She stated she apologizes for being late, and we can deal with these matters in executive session.

Councilor Ingham replied to clarify we can read through this document that they have provided between now and the next time that you request an executive session regarding this matter.

Legal Counsel Cindy Phillips replied well again she hasn't read it and she doesn't really want to make any statements about it without having read it first. She explained this is the first time she has seen it she hasn't had any opportunity to look this over, it was not provided to her ahead of time and she is not going to give Council any advice without knowing what she is talking about.

Councilor Ingham stated she would take it upon her discretion that she can read it. She would like to become fully informed before they go into executive session regarding this matter.

Ken Leahy, owner of Ken Leahy construction, Cornelius, Oregon, explained just a brief history of things. He stated he thought he would be the hero coming into town building a street that everybody wanted and putting up a million bucks to get that done. He explained we did it, you now have a Goodwill, a Les Schwab, Fultano's Pizza and he understands another restaurant coming in. He talked about what took place at the ribbon cutting; he remembers an older lady getting up and saying she has been lobbying for this for like 10 or 15 years and it finally got done. He explained the last thing he thought he would have to be doing is to be the bad guy who's trying to get paid for something that they did. He explained they have gotten paid a good portion for what has been in there so far but the Rose Villa (Valley) Retirement Center has refused to pay and they have no leverage on that without the City coming to their aide. He stated having said that I will turn it over to Chris who has done all the legal work on this.

Christine Kosydar, (hard to hear, she wasn't speaking into the microphone at first), explained she works for Stoel Rives in Portland, Oregon. She explained that Ken has laid out the basic facts for

you that it was his company that came in and built the street. She explained he built it under the agreement which is one of the exhibits in the materials that we sent to you and the rest of the exhibits are other City documents and emails. She explained these are all documents that should be in the City's file, in fact they got some of them from the City's file and some of them they got from other folks. She explained the problem that they have here is that there is the Rose Valley Care Facility, and she will just refer to that as the Care Facility properties, that are not paying and they owe approximately \$303,000.00 and Mr. Leahy had to go borrow the money to build those improvements. She explained when he borrowed the money to build those improvements he expected that he was going to be paid after the improvements were completed. She explained Mr. Leahy had no intention of ever going into this construction project and being a long term lender or financier for the Rose Valley folks. She explained as it turns out after it was all done and he's come back to ask the City to help him collect because it is the City who would have to collect for these improvements, the City says no we are not going to help you do that, She explained the City had various reasons that they says they are not going to help Mr. Leahy collect those monies; one is that they're not yet due and that there is some sort of development that is suppose to go in at a future date and then when that happens then there will be payment at that time. She stated that is not what she understands based on reading the various documents that are here and although you are apparently not permitted she is just going to go through the documents and tell Council what is here because she thinks it is important for Council to have a little bit of the history of this whole project out there about the Rose Valley Care Facility. She went through the handout. She explained under Exhibit 2 the City served a notice of final decision that says "That in conjunction with construction there's going to be two phases in the project, phase one will be the assisted care facility and with phase two there's going to be a residential care facility the owners must construct half street improvements on the 2nd Street frontage". She stated so for construction of phase two it was a condition of approval that they construct the improvements along 2nd Street. She went over Tab 3 of the handout. She explained the City served a notice of final decision in which it approved construction of the phase two cottages on the care facility property, subject however to construction of the half street improvements on 2nd Street. She explained the last section of this documents says "In lieu of immediate one half improvements the improvements shall be completed in three years and shall be bonded to ensure completion". She went over Tab 4. She discussed the document dated June 7, 2004. She explained the agreements says "If the exhibit A work is not completed within the three years from the day hereof the City shall be entitled to complete the work and recover the full cost and expense of such completion". She explained under Tab 5 there is a bond issued to go with this agreement. She explained sometime in 2004 the cottages were constructed but the 2nd Street improvements are not completed. She explained under Tab 7 on April 26, 2006 the City Engineer sent to the bonding company a report that the off street improvements have been completed. She stated such report is incorrect because they haven't been completed and based on this incorrect report the bonding company apparently has released the bond. She continued through the hand out. She explained under Tab 13 the City acknowledges in a letter to the care facilities purchasers representative that the improvements have not yet been fulfilled. She explained under Tab 14 the City Manager sends to City Council a request to act on an advanced financing reimbursement agreement to fund the development. She stated there is nothing in this request that indicates that payments of the owners of the care facility will be relieved of or exempt from paying for the 2nd Street improvements. She explained under Tab 15 on January 2010 the City actually adopts the resolution. She explained under Tab 16 City Manager Hanken sends an email to the prospective purchaser saying that "the conditions of approval build out the 2nd Street improvements are still applicable to the new owners of the 33800 SE Frederick Street, the conditions of approval are transferable. Condition is met when the owner pays for their proportionate share of the entire street under the advanced funding reimbursement resolution that was passed". She stated there is nothing

here that says you don't have to pay for it later, some other date, you pay for it when the advanced funding resolution passed. She explained under Tab 17 two days later in an email she believes it is the City Engineer, he reiterates the same thing. She explained under Tab 18 the City adopts the ordinances. She explained in this ordinance it makes clear that once somebody has made the improvements to better the property money is due. She explained under Tab 19 Mr. Leahy enters in to the advanced financing agreement. She explained he does so in reliance to three things; one he has the City's assurances to Mr. Scharf and Mr. Waggoner that the City would take care of collection from the care facility owners. She explained he also relies on the ordinance and also the language of the Leahy agreement that it appears that there is going to be money due and owing as soon as these improvements are installed. She explained under Tab 22 there are pictures of the curb cuts and they are nice and finished. She explained there is nothing in the ordinance that says that once they are benefitted they don't have to pay anyway, she stated they have been benefitted. She stated there are two reasons here that the care facility property owes money; one is they have an old agreement which runs with the property, which is in default, which is in breach and the City has the right to build out those improvements and demand payment and that's what happened. Second thing is the property under the ordinance, even aside from all that, has been benefitted. She stated we now are faced with the fact that the City is denying instructions to Mr. Leahy to put in the curb cut, denying that there is this obligation out there for the care facility owners to pay and Mr. Leahy is sitting here holding the bag for the benefit of the City and for the benefit of the care facility owners. She stated Mr. Leahy isn't asking the City to pay for those improvements he is asking the City to do what it promised to do in it's written agreement with him which is make reasonable efforts to collect. She stated if they can't collect then the City has under it's ordinances, which she has looked at, the right to lien the property and if they still don't respond, the right to foreclose. She explained the City's denial of the obligations here are putting Mr. Leahy in a very awkward position, he needs to be paid. She stated he has benefitted the City considerably, he's benefitted the facility considerably and if we can't resolve this in a reasonable way then it's leaving Mr. Leahy with very few options, which he does not want to have to exercise and so they request Councils attention to this. She stated figure out maybe an independent third party, and objective third party to figure out how did that bond get released and why is this agreement not being enforced that those care owners have and dig through that to figure out what happened here. She stated the second thing is make a demand, it's really not that hard, send them a letter, send the care facility owners a letter and tell them they owe money and that you are going to take steps. She stated that is what Mr. Leahy asks and if the City isn't incline to do so or there is any real question about this at all they would ask for an opportunity to be put on the agenda and to come back and to address Council further on this.

Mayor Burge and Councilor Ingham thanked Ms. Kosydar.

Consent Agenda ~ November 7, 2011 City Council meeting minutes

Councilor Ingham moved and Council President Bernhard seconded the motion to approve the November 7, 2011 City Council meeting minutes. Motion passed (7-0). Mayor Burge, aye; Council President Bernhard, aye; Councilor Gedlich, aye; Councilor Ingham, aye; Councilor Meres, aye; Councilor Erickson, aye and Councilor Reed, aye.

Old Business

Ord No. 818: An Ordinance Relating to Municipal Finance, Adding a New Chapter 3.25 to the Scappoose Municipal Code, and Creating the Scappoose City Lien Docket

Mayor Burge read the title for the second time.

Motion passed (7-0). Mayor Burge, aye; Council President Bernhard, aye; Councilor Gedlich, aye; Councilor Ingham, aye; Councilor Meres, aye; Councilor Erickson, aye and Councilor Reed, aye.

New Business

November 8, 2011 Election Results

City Manager Hanken explained he was hoping to have the City Charter abstract for Council to approve tonight but it hasn't come in the mail yet. He explained this was approved by the voters on the November 8 Ballot and the abstract will be on the next agenda for Council to approve.

Transportation Plan Update Discussion

City Manager Hanken went over the staff report. He explained this is a report to kind of give some idea as to a potential issue that will probably be coming down the pike. He explained as discussed at prior City Council and Planning Commission meetings, the City's utility master plans generally date from the 1990's and needs to be updated to lay out the long-range capital improvement program for streets, water, sewer, parks and storm drainage. He explained one of the things that the consultants for Airpark Development LLC has talked about is performing an amendment to the existing TSP that looks specifically at the airports property as a part of addressing the transportation issues. He stated he thinks that is a mistake. He explained he thinks the developer has a very unrealistic time frame in terms of how fast this is going to be approved. He explained he thinks just looking at amendments to the TSP is going to create us problems down the road simply because when you start looking at the overall transportation plan there is a great potential for conflict between what gets passed and what we develop as a TSP. He explained this is one of those projects where the City needs to be in the lead in order to cover all the bases and have a total comprehensive plan and the plan has to be in the public eye through various public meetings and that process.

Councilor Gedlich asked City Manager Hanken when did he want to begin the discussion in regard to this and work with the budget committee.

City Manager Hanken replied he thinks this is one of those things that we will be talking about early January. He explained right now he is trying to get an idea in terms of what a good solid dollar figure for transportation costs study is going to run. He explained we do not have anything in our budget right now. So the soonest we could start the process would be July 1, 2012.

Councilor Gedlich asked City Manager Hanken if he could make sure that all of them have a copy of the 1997 findings with a little bit of documentation, not only for this body but for the budget committee members so they have a chance to review it.

Mayor Burge and Councilor Meres replied they have their copies and don't need another.

Mayor Burge explained to him it makes more sense to do the complete study.

Announcements

Mayor Burge went over the calendar.

City Manager

City Manager Hanken explained he kind of wants to give Council a little bit of an update related to the meeting they had with Earl Fisher and Sheriff Dickerson related to the district in terms of providing police protection in rural areas. He explained as you know you have probably read in the paper the budget is not good at the County and the Sheriff's patrol is down.

Police Chief Greisen explained the Sheriff's office is down to four patrol deputies for taking dispatched calls.

City Manager Hanken explained one of the things that Commissioner Fisher talked about was is there a was to contract with municipalities to provide service to the outside areas based upon the school district boundaries. He talked about that the County had approximately (Chief Greisen answered between \$700,000.00 and \$800,000.00) one time money. He explained Commissioner Fisher wanted to know, along with Sheriff Dickerson, in terms of discussion in terms of could services be provided for that cost, in terms of dividing that up. He explained as he and Chief Greisen talked about it from his standpoint was a real sticking point that the level of service for the City of Scappoose will not be compromised by taking on a contract with the rural areas of the school district. He explained the question he had for Police Chief Greisen was what type of staffing level do you need to provide adequate out in the rural area if in deed that is something we are going to look at.

Police Chief Greisen replied to do, what we could would need is a minimum of four police officers.

City Manager Hanken stated the bottom line is if Scappoose our size needs additional four officers to serve the rural area, you start looking at St. Helens, Rainier, Clatskanie and you start looking at Vernonia that \$800,000.00 isn't going to work. He explained we kind of walked away from that meeting is while the theory sounds good about the municipalities providing additional services or the County trying to contract with municipalities for service we don't think it is going to work. He explained the County is going to try to discuss other options.

Councilor Ingham asked if there has ever been any discussion with Sheriff Dickerson about outsourcing with private agencies for patrol.

Police Chief Greisen replied he is not sure.

Councilor Gedlich asked if the Sheriff Office has thought about hiring a special security consultant, people to run the jail and that way the deputies can be out on the road.

Police Chief Greisen replied he was not award if that has been talked about.

Councilor Meres explained he had spoke to Commissioner Heimuller about contracting out the jail and apparently Commissioner Heimuller seems to think that there is some sort of Oregon State Statue that doesn't allow them to contract out. He explained but he knows four counties that are in cooperation of running a jail. He explained he has always try to tell them what they need to do is go out for a tax district.

Mayor Burge explained he thinks when you talk about the \$100,000.00 just for an officer, that doesn't include supervisor, the vehicles, the uniforms and all the overhead that you also have to take into account.

Councilor Gedlich stated the County Commissioners are going to have to increase their budget. She explained even with the \$800,000.00 that is being discussed they could at least still hire four more deputies and then come up with some kind of an alternative to work with everybody. She explained the municipalities already work with the County.

Councilor Reed explained it is unfortunate and he agrees with Councilor Gedlich that the County needs to reprioritize because speaking as one who, by policy, has had to stage for any kind of an incident that they deemed to be violent to wait for the police to get there and if it was out in the County they had waited as long as 30 or 40 minutes for an officer to respond.

Police Chief

Police Chief Greisen reminded everyone of "Donut Day" December 17, 2011 7:00 a.m. to 1:00 p.m. at the Scappoose Police Department.

Council

Councilor Gedlich thanked staff.

Councilor Meres thanked City Manager Hanken and Barbara Hayden for assisting Community Club with the lights.

Council President Bernhard stated Happy Thanksgiving to everybody. He stated to City Manager Hanken and Police Chief Greisen please continue to have open dialog with the County on this particular issue. He stated even though he strongly believes this is a County issue they are not going to be able to solve the County problem but we can continue to lead by example throughout the County and he echoes everyone else's sentiments here that this is a County issue and they should not be doing anything that is going to be the detriment of our citizens and what they have paid for.

Councilor Ingham wished everyone a Happy Thanksgiving. She explained she won't be at the meeting on December 5, 2011.

Councilor Erickson also wished everyone a Happy Thanksgiving.

Mayor Burge wished everyone a Happy Thanksgiving.

Adjournment

Mayor Burge adjourned the meeting at 8:01 p.m.


Scott Burge, Mayor

Attest: 
Susan M Reeves, CMC, City Recorder