

Minutes of the
CANNON BEACH CITY COUNCIL
Special Meeting and Work Session
Tuesday, December 12, 2023
Council Chambers

Present: Mayor Barb Knop, Council President Nancy McCarthy, Councilors Brandon Ogilvie, Lisa Kerr and Gary Hayes

Excused:

Staff: City Manager Bruce St. Denis, IT Director Rusty Barrett, Recorder Jennifer Barrett, Public Works Director Karen La Bonte, Community Development Director Steve Sokolowski, Police Lieutenant Chris Wilbur, Finance Director Laurie Sawrey, HRAP Interim Director Mylasia Miklas

Other: Special Counsel Carrie Richter via Zoom

CALL TO ORDER AND APPROVAL OF AGENDA

Knop called the meeting to order at 6:00 p.m.

Motion: Ogilvie moved to approve the agenda; Hayes seconded.

St. Denis noted during good of the order I'll be asking direction regarding attorney time.

Vote: Hayes, McCarthy, Ogilvie, Kerr and Knop voted AYE: the vote was 5:0 and the motion passed unanimously.

PUBLIC COMMENT

Knop reminded the body to keep their comments under three minutes, state their name and mailing address and to be kind and respectful.

- Tom Landrum PO Box 865: spoke of his concerns about a letter in the Gazette with no city response.
- Jan Siebert-Wahrmund PO Box 778: requested a public comment period for Planning Commission and Design Review Board.

DISCUSSIONS

(1) Chamber of Commerce Quarterly Meeting

Executive Director Jim Paino said we included the history section in the packet as a reminder, and if you have any questions willing to answer them. McCarthy asked on slide of 2019 negotiations, who was the third-party audit that is spoke about, Paino replied it's the same one you use, and we split the cost. They gave recommendations on separating funds, and Paino gave an overview of the process. Paino gave an

update on Clarity of Place. Paino asked the city to provide information from the Clarity of Place list. Kerr asked will we see the data once complete, Piano replied yes, and I am hoping you'll be included in the process. Marketing Manager Sierra Spinler gave an overview of the Winters Waters program. This will come to fruition in the next couple of months and we are very excited to be sponsoring this event. Hayes asked by sponsoring it you are putting money into the program, Spinler replied if the DMO sponsors it they are focusing on having events and special items in Cannon Beach, giving an overview. Spinler answered Councils questions. Paino gave an overview of the Travel Oregon grant, adding we did not receive the grant for the wheelchair program. We'll keep an eye out for another grant or other ways to help. Paino answered Councils questions. Paino gave an overview of the DMO budget. Paino and Spinler answered Councils questions.

Knop asked will you send us a corrected spreadsheet, Paino replied yes.

(2) Finance 4th Quarter Report

Sawrey presented the 4th quarter report. Sawrey answered Council's questions.

(3) Lifeguard Program Discussion

Deputy Fire Chief Jason Smith presented the proposed lifeguard program, a copy is included in the record. Smith and Fire Chief Marc Reckmann answered Councils questions. Discussed the financial numbers presented. Reckmann will go back and review the financial numbers and resubmit to Council. Discussed the process moving forward. St. Denis noted Reckmann has requested the remainder of the funds of the 23-24 that were budgeted in order to do the hiring process before July. Knop requested to come back with corrected numbers before March. Discussed the start date of the program. Reckmann said we will come back to the January work session with updated numbers. The council thanked Reckmann and Smith.

(4) Haystack Rock Violation – Penalty Language

St. Denis summarized the staff report giving an overview of the email from Glendale Phan, asking what is the number you want to use for a violation? Hayes replied can we be general and say up to \$1,000, a discussion ensued. Wilbur added there is still a federal component too. Fish and wildlife has been a great partner and we work well with them. Wilbur gave an overview of the city's process of citing someone, noting the judge can make a determination. McCarthy asked is it up to the judge to determine if it goes to the feds, Wilbur no, we automatically forward everything, and they review. Consensus for violation to be up to \$1,000.

Took at break at 8:32 pm. Reconvened at 8:37 pm

Knop closed the work session and opened the special meeting.

(6) Resolution 23-24 for the Purpose of Approving Changes to the FY 2023-2024 Budget by Increasing Appropriations in the General Fund To Allow for a Capital Outlay for the Purchase of a Roof, Doors, and a Cover For The UTV

Miklas presented the staff report.

Motion: Ogilvie moved to adopt Resolution 23-24 for the purpose of approving changes to the FY

2023-2024 budget by increasing appropriations in the general fund to allow for a capital outlay for the purchase of a roof, doors, and a cover for the UTV; Kerr seconded.

Vote: Hayes, McCarthy, Ogilvie, Kerr and Knop voted AYE: the vote was 5:0 and the motion passed unanimously.

(5) Resolution 23-25 for the Purpose of Approving Increases and Decreases to the FY 2023-2024 Budget by Making An Intrafund Transfer of Appropriations and Water Resiliency Phase 1 – Seismic Improvements Construction Project Award

La Bonte read the staff report. Kerr asked if Windsor is our consultants for the project, La Bonte replied they won the bid for the engineering. La Bonte gave an overview of the process used on the rebid, and the review of options when the bids came in higher than the estimate.

Motion: Hayes moved to approve the contract award to Halme Excavating Inc for the Water Resiliency Phase 1 Seismic Valve project and Adopt Resolution 23-25 for the purpose of Approving Increases and Decreases to the FY 2023-2024 Budget by Making An Intrafund Transfer of Appropriations; Ogilvie seconded.

Vote: Hayes, McCarthy, Ogilvie, Kerr and Knop voted AYE: the vote was 5:0 and the motion passed unanimously.

(7) Resolution 23-26 a Resolution Declaring the Need to Acquire Certain Real Property for Drainage Project and Resolution 23-27 a Resolution Declaring the Need to Acquire Certain Property For Water Utility Improvements for a Looped Water System

La Bonte read the staff report. La Bonte said on the Presidential's we haven't been able to reach the folks. The resolution is a phase of the process that comes to you before moving forward. For Haystack the resolution is for the easement, but if they decline the easement, this is the process that would be needed to start condemnation. Hayes asked about outfalls, we are condemning not going to easement, La Bonte replied we haven't been able to reach the owners for that discussion. They've been contacted multiple times. Hayes asked is there an option to condemn the property outright then do an easement, La Bonte replied it's my understanding if we condemn the easement is not necessary as we'd be the owners. St. Denis added this starts the condemnation of the property and if they'd like to do an easement after receiving this we can discuss. McCarthy asked what would the easement on Haystack Heights prohibit the owners, La Bonte replied there shouldn't be a change for the owners. They can still build on the property, but the area would be in the setback so they couldn't build on that location. If they requested variance to build in our easement, we would need to deny it.

Motion: Hayes moved to Adopt Resolution 23-26 a Resolution Declaring the Need to Acquire Certain Real Property for Drainage Project; Ogilvie seconded.

Vote: Hayes, McCarthy, Ogilvie, Kerr and Knop voted AYE: the vote was 5:0 and the motion passed unanimously.

Hayes asked will this project solve the problem from trenching, La Bonte replied yes it will, giving an overview. McCarthy asked once condemned it goes to a judge who determines the

amount, La Bonte replied we have to get an appraisal first.

Motion: Ogilvie moved to Adopt Resolution 23-27 a Resolution Declaring the Need to Acquire Certain Property for Water Utility Improvements for a Looped Water System; Hayes seconded.

Vote: Hayes, McCarthy, Ogilvie, Kerr and Knop voted AYE: the vote was 5:0 and the motion passed unanimously.

Knop said I want to thank your staff for everything they did last week.

(8) Tree Removal Permit to Remove a 50 Inch Spruce Tree as Part of the Development.

Sokolowski summarized the staff report, adding I am bringing back the information you requested from the previous meeting and Gerhardt's report. Hayes asked do we have time to get another opinion as he recommended. Sokolowski replied since this is a condition of approval, I am not sure if there is a time concern. Richter said I haven't been involved directly, so I am unable to answer the questions. Sokolowski gave an overview of the situation to Richter. Kerr said the arborist said the tree was viable and there is a way to trim it to make it withstand winds better. I think the tree needs to be kept. Sokolowski noted council can grant or deny, after that we would issue building permit and they would still have to submit a tree removal permit for the remaining tress.

Motion: Kerr moved to deny the tree removal permit for the 50" Sitka Spruce (S-1) at Tax Lot 00600, with regards to the Paul White Accessory Dwelling Unit appeal, App#23-06 as discussed; Ogilvie seconded.

Paul White via Zoom – I am looking at one of your provisions and it says the purpose of the chapter is to establish protective regulations for trees in the city. Item B, the intent not to prohibit the removal of trees completely or to require extraordinary measures to build structures rather the intent is to stop wanton tree destruction. My question is if we save that tree and opinions are clear that it may not be stable and winds from south or east and could fall north or west would the city assume the liability. Kerr replied Jeff Gerhardt didn't say it would fall over, he said it would be viable. White replied he has purposely deferred his opinion to someone else. If you are willing to take the liability, I would leave it there. As Peter Lindsey said during testimony he would leave his house during storms out of worry a tree would fall on it. Kerr said I think it is in the intent of the ordinance, every house in the town is always in danger of having a tree fall on it. I sleep downstairs during a storm. White said I am going to replant trees, these have never been taken care of, they are scrap trees. What happened to property rights in this city.

Jay Orloff architect: I read through the opinion as well, few things to point out. We have to take into consideration that there will be a 30 ton excavator running across 50% of the root zone. In addition there's going to also be a 30 ton dump truck running over this root zone and I think that has to be taken in consideration rather than just cherry picking the best stuff out of Jeff Gerhardt's report. Paul is concerned with is the liability you are saying that we have to keep this tree so is there going to be some liability responsible by the city for making that decision?

Richter said I don't know enough about this application to weigh in. My only recommendation it's not the roll of the council to have discussion with the parties. We probably not need to engage into an argument over liability. Knop replied I just wanted to give them a chance to say what they wanted to

say. McCarthy asked if they take extreme care of the tree during construction and it still dies, are they liable of any fine or violation, Sokolowski replied there is a hazardous tree but I don't think there is much we can do. Hayes said is it appropriate to ask if the applicant is interested in the opinion. Richter replied yes, it is. White said as you know I've been going through this process since august. Had 4, 5 or 6 different opinions and there is no guarantee the tree is going to make it. To continue on this path where no one wants to take responsibility. What happened to property rights. Knop said so are you saying no to the question? White replied I am not sure we are going to gain, so I am basically saying no. Kerr said my recollection of neighbors testimony was with all the trees cut down on lot he's afraid of the remaining trees would fall down on his house. He was testifying he was nervous about trees falling on his house.

Ogilvie said I seconded the motion in order to advance the discussion. I am involved in the construction industry and I do not believe that the tree would have the best chance of success therefore I cannot vote in favor of this motion. Kerr said we asked for Jeff's opinion and he gave it, a discussion ensued. Knop asked the application would you be willing to extend time to get an opinion from the root specialist referred to by the our City Arborist Jeff Gerhardt? White replied no. McCarthy said how can the city ensure the protection of the tree will ensure, Sokolowski said it's up to the applicant and we have the TPZ requirements. McCarthy asked will they be monitored, Sokolowski said when the building inspector goes out there during construction.

Vote: Hayes, McCarthy, Kerr and Knop voted AYE; Ogilvie voted NAY; the vote was 4:1 and the motion passed.

(9) Approval for Findings of Fact for DRB 23-19

Sokolowski summarized the staff report. Kerr I have questions on the 4th finding that starts CBE adaptive re-use, would like to add after tourism and community related events. In the orders says reuse but it wasn't reuse and should say redesign. There is a typo on page 1 of the order where it says interests. Hayes said on condition #1 delete complete with interpretive signage.

Motion: Hayes moved to approve the findings of fact and conclusion of law for the Appeal of DRB 23-19 as amended; Ogilvie seconded.

Vote: Hayes, McCarthy, Ogilvie, Kerr and Knop voted AYE: the vote was 5:0 and the motion passed unanimously.

Knop said thank you to everyone who helped getting the findings together.

(10) Good of the Order

Kerr said the tree ordinance focus group is working on amending the tree ordinance. We met with staff which was very helpful and would like to have Bill Kabeiseman look at it to make sure there is nothing that we are missing legally. It's not nearly as complicated as the wetland ordinance. I'd be surprised if there would be any legal ramifications. I'd like permission, our rules are anything more than an hour needs approval by the City Manager or Council, not sure how long it would take. Next it goes to the parks committee, then to everyone. McCarthy said when does it go to a public hearing, Kerr replied not until it goes to everyone. Sokolowski said from the procedural standpoint it's similar to wetlands. Anytime you are amending the zoning ordinance you have to do a POPA notice, then it can go Planning Commission for a hearing. They make recommendations to council, then council will have a hearing and

consider for adoption. Sokolowski gave an overview of the POPA notice. St. Denis said the reason we are having this discussion at this meeting is that the way the code reads is the councilor can ask the attorney for legal opinion if the time would take less than an hour, if more it goes to city manager or Council. I think Councilor Kerr gave a great presentation and think it should be a council decision since it involves other boards. Knop asked do we put a cap on it? St. Denis replied I don't know how many hours and what would come out of it, no reason to think it would excessive hours. Ogilvie said I think we should look at it as any other order of business. Sokolowski said it would be worth while as if there is something to catch we do so early on. Knop said I applaud the efforts of the focus group and appreciate all their efforts. Council consensus to give authorization for Kerr to contact Kabeiseman.

Kerr asked for an update on Sea Turtles Forever. J Barrett replied it is on our list of things to do, we haven't forgot. St. Denis added they are also asking for reimbursement for something we did not authorize. If the council wants to direct staff to pay it that's fine. They knew they did not have the work authorized to do the work. Discussed what additional information council wanted. Council requested Sea Turtles Forever submit an invoice to the city including how many people hired, hours worked, rate of pay, how much collected, did the people get paid, and if so what was the funding source for the payment, where they did it. Knop requested photos and to add to January work session.

Sokoloski said in the motion of the DRB appeal, there is an error in the number. We will bring the finding to January 2nd meeting for a vote on the revisions and correct the number in the motion.

McCarthy said Coffee with Councils on Monday at 10.

Knop said the code audit meeting is tomorrow, and the Council retreat on Thursday at 11 am.

ADJORNMENT

The meeting was adjourned at 9:54 p.m.

ATTEST:

Jennifer Barrett, Recorder

Barb Knop, Mayor