

**NEWBERG CITY COUNCIL MINUTES
REGULAR SESSION
OCTOBER 5, 2015, 7:00 PM
PUBLIC SAFETY BUILDING (401 E. THIRD STREET)**

The work session was held at 6:00 p.m. preceding the meeting. Present were Mayor Bob Andrews, Councilors Lesley Woodruff, Stephen McKinney, Scott Essin, Denise Bacon, Mike Corey and Tony Rourke. Also present were Pro-Tem City Manager Steve Rhodes, City Attorney Truman Stone, City Recorder Sue Ryan, Interim Human Resources Director Nancy McDonald, and Community Development Director Doug Rux.

REVIEW OF COUNCIL AGENDA:

Councilor Essin wanted to talk about tree programs.

COUNCIL BUSINESS:

The Mayor had two items to discuss regarding ODOT and one item regarding the CMPT recruitment committee. Councilor Woodruff wanted to discuss Chehalem Youth and Family Services.

PRESENTATION

CA Stone presented on quasi-judicial public hearings. He showed a short video on public hearings. He then discussed the judicial role of Council, due process, how hearings were conducted, approval criteria, evidence, options in response to applying facts to the criteria, and findings of fact. CDD Rux gave case scenarios for appeals and the criteria that were used to make a decision. CA Stone discussed scenarios where the criteria lacked clarity and needed Council interpretation.

There was discussion regarding interpretation of criteria. CA Stone clarified if there was a hearing with proposed findings and the Council was not satisfied they were the correct findings, Council could direct staff to change the findings and bring them back. It would not be permissible to say they did not want to approve the application and to rewrite the findings so it was denied. The Council had to give appropriate direction for the criteria that was not met.

EXECUTIVE SESSION:

The Council entered into Executive Session at 6:55 p.m. for the purposes of exempt public records. The Council exited the session at 7:35 p.m.

CALL MEETING TO ORDER

The Mayor called the meeting to order at 7:40 p.m.

ROLL CALL

Members Present:	Mayor Bob Andrews	Scott Essin	Stephen McKinney
	Lesley Woodruff	Denise Bacon	Mike Corey
	Tony Rourke		

Staff Present:	Steve Rhodes, City Manager Pro Tem	Sue Ryan, City Recorder
	Truman Stone, City Attorney	Jay Harris, Public Works Director
	Doug Rux, Community Development Director	
	Associate Planner Jessica Pelz	Associate Planner Steve Olson

PLEDGE OF ALLEGIANCE: The Pledge of Allegiance was performed.

APPOINTMENTS:

Mayor Andrews recommended appointing Loni Parrish to the Newberg Downtown Improvement Plan Advisory Committee.

MOTION: Bacon/McKinney moved to appoint Loni Parrish to the Newberg Downtown Improvement Plan Advisory Committee. Motion carried (7 Yes/ 0 No).

CITY MANAGER PRO TEM'S REPORT:

CMPT Rhodes had been meeting with Department Heads and community organization representatives to become familiar with the City.

PUBLIC COMMENTS: None.

CONSENT CALENDAR:

MOTION: Corey/Rourke moved to adopt the Consent Calendar, including approval of the City Council minutes for September 8, 2015 and to approve a Food for Fines event at the Newberg Public Library for October 20-31, 2015 in conjunction with the 40th anniversary of Newberg FISH. Motion carried (7 Yes/ 0 No).

PUBLIC HEARING - LEGISLATIVE:

Ordinance 2015-2786, UGB repeal: Mayor Andrews opened the public hearing and called for any abstentions, conflicts of interest, or objections to jurisdiction. There were none.

Associate Planner Jessica Pelz gave the staff report. She said this was the last step in repealing the South Industrial UGB amendment application. This ordinance would repeal all of the ordinances that were related to the amendment. It would also repeal the South Industrial UGB report and findings, Economic Opportunities Analysis and the City would go back to the 2006 version, Comprehensive Plan text amendments related to population, buildable lands, supply and need, and other policies regarding economic development, South Industrial Area Transportation Map, and would remove the area from the UGB. The next step was to work with Yamhill County to repeal the County's local ordinance that also adopted the UGB amendment, and the final action was to go to LCDC to let them know everything was repealed at the local level and they were withdrawing from their consideration. Staff recommended approval of the ordinance.

Mayor Andrews asked if there were any questions for staff. There were none.

Mayor Andrews called for the proponents. There were none.

Mayor Andrews called for the opponents. There were none.

He asked for any additional written testimony. There was none.

AP Pelz gave her recommendation for adoption of the ordinance.

Mayor Andrews closed the hearing. The Council began deliberations.

MOTION: McKinney/Bacon moved to waive the second reading for Ordinance 2015-2786.

Motion passed (7 Yes/ 0 No).

MOTION: Bacon/McKinney moved to adopt Ordinance 2015-2786, An Ordinance of the City of Newberg repealing Ordinance 2013-2761, which adopted revised findings in support of the South Industrial Urban Growth Boundary amendment, revisions to the Economic Opportunity Analysis, amendments to the Comprehensive Plan, and repealing certain other ordinances. Motion passed (7 Yes/ 0 No).

PUBLIC HEARING – ADMINISTRATIVE:

Resolution 2015-3206, Springs Divestiture: Mayor Andrews opened the public hearing and called for any abstentions, conflicts of interest, or objections to jurisdiction. There were none.

PWSD Harris gave the staff report. He said the Springs water system served 72 customers north of the current City of Newberg. He explained the system's history, how the City switched to using wells instead of the Springs, the rate increases to meet cost recovery for the Springs system, and creation of the agreement with Chehalem Springs Water Association to take over and have Hiland Water Corporation operate the system. He said the fiscal impact of making this change would be divesting 87.3 acres with the total asset valuation at \$865,000 that included real estate costs, water treatment systems, depreciated costs of the pipe system, and water rights. A 30-year analysis showed the City would lose revenue from transfer of the system, but they also no longer had the liability, capital expenditures, and operations and maintenance of the system. The Association could break even during the 30 year period. Exhibit A to the resolution described the City's water system to be transferred. The Association had adopted bylaws and elected Board members and

had multiple meetings with customers regarding the transfer. The Association planned to begin operation and maintenance of the Springs water system sometime later this year.

Councilor Essin asked about the assessed valuation of the 87 acres. PWSD Harris said the agreement included a conservation requirement so it would remain as open space forever if the property stopped being used as a water system. The property was steep and hilly, which restricted development. The assessed valuation with the conservation easement was about \$145,000. The real value of the property was protection of the watershed as a resource.

Councilor Essin said it might be in the Association's best interest to contract with the Chehalem Park and Recreation District to take ownership that would keep them from paying taxes and use the land for trails. PWSD Harris thought the conservation easement gave better protection to the spring boxes and was concerned that a park district could damage the water resource. The Association had been to the Assessor's office outlining the acreage and conservation easement and they would have minimal to no taxes, similar to any other public organization.

Councilor Corey asked about the cost to the City if they kept operating the system. PWSD Harris said the operating and maintenance costs were \$75,000 per year. Councilor Corey asked about the contract and the cost of operating the system for a year after the approval of the transfer. Who would be bearing the cost of the system? PWSD Harris said the City would assist the Association with operations of the system, but would not be operating it. There would not be a steep learning curve as Hiland was familiar with the system.

Mayor Andrews asked about protections on the uphill sides adjacent to the Springs? PWSD Harris said they had not been identified as Goal 5 natural resource areas up and around each Springs parcel. They were steep areas that were difficult to access. The conservation easement only applied to the City's property, not the adjoining properties.

CA Stone said there would be potential Clean Water Act issues as some of the Springs provided water to the fish bearing streams lower down. The Springs people had formed an Association and would not be tax exempt from property taxes. The benefit they received from granting the conservation easement was to lower the fair market value of the property and pay reduced taxes. The conservation easement would be a right held by the City that would ensure these properties would be maintained as green space in perpetuity.

Councilor Rourke asked why they were giving the Association the Atkinson Spring. PWSD Harris said Atkinson Spring was in the center, but was not currently needed at this time. After some future improvements, Atkinson would have a chlorine system added to it and it would be brought online. The agreement was to transfer all of the Springs to the Association. Councilor Rourke said they were going to exchange the Springs system for the City to no longer operate and maintain it. That didn't account for the \$350,000 share of the chlorination project from 2008. Had there been a conversation about them purchasing the property from the City?

CA Stone said there was a proposal not to purchase the system, but operate the system on the City's behalf and their income would derive from the revenues of the system. He explained the issues regarding that option, such as the customers would have little say since they were outside the City. In the proposed model, the citizens would take over the system and make the decisions.

Councilor Essin asked about Roger Currier's letter urging the Council to reject the proposal and have staff create a new one based on the mandate of the 2008 resolution. CA Stone said when the State mandated improvements to drinking water systems in 2004-2005, studies were done and options were considered which led to the chlorination project. In 2008 a resolution was passed by the Council after the Citizens Rate Review Committee brought the issue forward. The resolution set a policy that the system ought to be run on a cost neutral basis and rates cover the costs, but that did not occur until the last rate review process in 2014.

Councilor Essin asked if the reason they did not want to sell the land to someone else was due to the conservation easement. CA Stone said they did not have the option of shutting down the water system and liquidating the assets. The options were to keep the system and continue to run it, transfer it to the Association as proposed, or transfer it to the County to run. One of the requirements of this process was to disclose the market value of the property at the hearing. Staff put it into the record, but did not believe they were the actual values especially as they did not have the choice of selling them to developers. Some of them were watershed properties that would be restricted under environmental regulations.

Mayor Andrews called for any proponents. Michael Roos said he was a Springs customer and a board member of the Chehalem Springs Water Association. They represented 65 customers and were a nonprofit. In 2014 they signed a letter of intent with the City to transfer the ownership of the Springs from the City to the Association. He hoped the City would remain committed to their letter of intent.

Mayor Andrews called for any opponents. Lon Wall, resident of Newberg and water rate payer, was not here in his capacity as the Budget Committee Chair. He was concerned about giving the land away to the Springs group at no cost. The property had actual value and the City was going to give it away. If the property was going to cost the City a financial burden to hang onto, then the same financial burden was going to transfer to the Springs people. He was not sure why they would be more willing to take on that liability. The Springs owners had a representative on the Citizens Rate Review Committee, which meant they had been represented. He was asking that something be paid for the property and not just give it away.

Robert Soppe, resident of Newberg, said all of these issues would have been resolved if the 2008 resolution had been followed. When rates were updated in 2014 that didn't cover the cost of running the system until January 2016. While the 2016 rates might cover the ongoing expenses, it did not meet the shortfall for the previous seven years. He was troubled that the Council had never been given a plan to follow the 2008 resolution. If the Springs were not being used, the conservation easement would not be necessary, and value of the property would be increased and could be sold. He thought the City should look at alternatives to the Springs system itself. He was surprised the City would transfer Atkinson Spring which had no users or any production of water. He thought if in the future the Springs were no longer used, the property should revert back to the City. They had not given the citizens time to comment on this issue. He urged the Council to reject the resolution and request staff to provide one that was consistent with the 2008 mandate.

Mayor Andrews closed the public hearing. He asked for final comments from staff and recommendations. PWSD Harris thought there had been many discussions in the public forum to make people aware of the issues in the system. Regarding Atkinson Spring, it was not currently being used by the City and the City would not use it in the future. It needed significant improvements and he did not see a benefit to the City to keep it. Rates had been covering operation and maintenance but not capital improvement projects in the past. The 2014 adjustment raised rates to help with the capital costs for the chlorination and corrosion control projects. The projects were more expensive because it was work on three springs for users in remote locations.

Councilor Bacon said it was less expensive for the Association than the City. PWSD Harris said Hiland was running systems this size all over the state and knew how to operate them at lower costs. He said staff recommended adoption of the resolution.

The Council began deliberations. Councilor Essin thought all of the questions that had been brought up had been answered. The value was lowered due to the conservation easement and transferring the Springs would relieve the City of a financial burden. They did not want to sell the land due to possible pollution of the water.

Councilor Rourke said the Council did not ask CRRC to look at this issue until 2014. The rate structure that went into effect January of 2016 did not account for future capital costs but did account for the \$350,000 repayment. It was not a net neutral to the City but was a net negative to the City over a 30-year period. If the Springs was going to do away with the asset, it should be returned to the City. If that was not possible, he thought the property should be sold to the Association.

CA Stone said with the forgiveness of the \$350,000 debt, it was not revenue neutral. The Association had concerns about getting grants and funding for improvements without free title to the property if it had a reversionary clause. The City's interest was to maintain the water systems so long as they were water systems. In the event they were no longer a water supply, they would be maintained as green space and stream corridors which would be done through a conservation easement. There was discussion regarding a reversionary clause, and what the City would do that would be different if they had ownership versus a conservation easement. The value was an environmental value and it would be protected through a conservation easement. They had some property value, but were unique properties that did not have the same potential uses that neighboring properties would have.

Councilor McKinney asked about the work that was done in 2008, and the \$350,000 the City paid and the \$350,000 the Springs still had to pay. PWSD Harris said it was a chlorine treatment upgrade project on Oliver, Snyder, and Skeleton

Springs. No improvements were made to Atkinson Spring. Councilor McKinney liked the idea of it being revenue neutral, but he did not know if the Association had the means to make it revenue neutral. It shouldn't be an encumbrance on rate payers. He would like to see something recovered for it but would have to see a usable model to make to work. His primary concern was if the Springs customers had a product that was usable and dependable.

Mayor Andrews asked about Page 98, General Terms and Conditions in the proposed contract. He asked for a definition of the term "termination". CA Stone said there were certain obligations in the contract. One was for a year City staff would assist with the operation of the Springs and there were some other ongoing obligations of the City. Those obligations would terminate five years after the effective date of the contract. However some provisions would continue after that time, such as giving the City access to the water in the event of an emergency, connection to the City system if the Springs area was added to the urban growth boundary, and a liability release. The conservation easement would be a property right that would attach to real property and would not be a contractual obligation.

Councilor Bacon thought this had to be done and this was the right way to do it. This issue had been talked about for eight years, and the public had been made aware of it. She did not think the Association needed to be held accountable for the \$350,000 debt as the City did not follow the process. Councilor Essin asked why they were using a quit claim deed.

CA Stone explained the deed options and that the quit claim deed transferred the property with no warranties about the property. The City would not be able to resolve all of the easement issues before it was transferred and the Springs Association would have to deal with the issue. It was protection for the City. There was litigation in the 1920s involving the City and some of the Springs property owners that involved a settlement and questions as to whether the obligations continued today. Some of the properties believed they had legal claims against the City related to their water rights and the opinions of outside counsel concluded the City did not have the exposure the property owners were claiming. This transfer would resolve some of those potential issues. The agreement as proposed forgave the \$350,000 debt, which was not revenue neutral. The Springs Association might find it would be a deal killer unless it was a long repayment period. They would not be able to financially run the system with high rates to their customers as the customers would most likely find other alternatives, such as drilling wells on their properties.

Councilor Rourke thought they could pay the \$350,000 back with a \$2 increase per cubic foot to rate payers in a relatively short time or over 30 years.

MOTION: Rourke/McKinney moved to return Resolution 2015-3206 to staff to come to an agreement with the Chehalem Springs Water Association for repayment of the capital improvements to the system for 50% of \$707,000. Motion passed (4 Yes/ 3 No [Bacon/Corey/Essin]).

NEW BUSINESS:

Resolution 2015-3229: AP Olson said the initiation to vacate Cherry Street due to an application submitted by Friendsview for future independent living apartments. The steps involved initiation, then a public hearing and decision on the vacation application. Staff recommended adoption of the resolution and setting a public hearing date of November 16, 2015.

Councilor McKinney asked if they should include Center Street north of Fulton as part of a better thought out plan for vacation. AP Olson said the applicant did not request that portion of the street and it required 100 % of the people abutting the vacation to agree and two-thirds of the people in the affected area to also agree. He gave more reasons not to extend it too far, such as maintenance and public utility easements.

MOTION: Bacon/McKinney moved to adopt Resolution 2015-3229, A Resolution initiating the vacation of the Cherry Street right-of-way east of Center Street and west of the Friendsview Retirement Community Campus, and requiring public notice and a public hearing on the proposed vacation. Motion passed (7 Yes/ 0 No).

COUNCIL BUSINESS: Mayor Andrews said they had information about the bridges being opened in the Dundee area. He suggested October 19-23 to start meeting for the City Manager recruitment. He asked for the subcommittee members to let CMPT Rhodes know their availability. He said a meeting was being set with ODOT and the mayors of Newberg and Wilsonville to discuss the Wilsonville Road issue.

Councilor Essin would like to have a report and discussion regarding tree programs.

MOTION: Essin/Woodruff moved to direct staff to develop a report and a recommendation on Urban Forestry or Heritage Tree program as soon as reasonably possible. Motion passed (7 Yes/ 0 No).

Councilor Woodruff said there had been a citizen complaint about one of the Chehalem Youth and Family Service houses. She asked for an update on how the City and CYFS were getting along and whether the issue had been resolved. CA Stone said staff had numerous meetings with the CYFS Board and some steps had been taken.


ADJOURNMENT: The meeting was adjourned at 9:40 p.m.

ADOPTED by the Newberg City Council this 2nd day of November, 2015.

ATTESTED by the Mayor this ^{5th} day of November, 2015.



Sue Ryan, City Recorder



Bob Andrews, Mayor