

MINUTES
MINUTES ARE DRAFT UNTIL APPROVED BY THE COUNCIL
CITY COUNCIL CHAMBERS, CITY HALL
29592 ELLENSBURG AVE
GOLD BEACH OR 97444
MONDAY, DECEMBER 14, 2009
REGULAR MEETING: 6:30 P.M.
INTERVIEW PLANNING APPLICANT AT 6:15 P.M.

CALLED TO ORDER AT 6:15 P.M. BY MAYOR WERNICKE:
INTERVIEW PLANNING APPLICANT AT 6:15 P.M.

The Mayor and Council interviewed Doug Brandt for a vacant Planning Commission position.

THE PLEDGE OF ALLEGIANCE:

ROLL CALL:

| | <u>PRESENT</u> | <u>ABSENT</u> |
|-------------------------------------|-----------------------|----------------------|
| Mayor James Wernicke | X | _____ |
| Council Position #1 Jeff Crook | X | _____ |
| Council Position #2 Larry Brennan | X | _____ |
| Council Position #3 Peter Peterson | X | _____ |
| Council Position #4 John Truesdell | X | _____ |
| Council Position #5 David Alexander | X | _____ |
| City Administrator Ellen Barnes | X | _____ |

****NOTE:** If anyone wishes to address this Governing Body, please present a completed "Business from the Audience" request to the Mayor at this time. Your request will be added under the CITIZEN COMMENTS section of our agenda. Comments and participation from the audience shall be limited to 5 minutes without redundancy.

SPECIAL ORDERS OF BUSINESS:

INTRODUCTION OF MAKENNA MARSTALL AS STUDENT LIAISON (A)
 Mayor Wernicke presented Marstall with a "Mayor & Council Appreciation Award" for her new role as Student Liaison.

CITIZEN COMMENTS FROM THE AUDIENCE:

Jim Freedman - Gold Beach

I am here as a representative of the Indian Creek Fish Hatchery. The Curry Anadromous Fishermen are the stewards of the Indian Creek Fish Hatchery. We have applied for a grant, and as part of the grant requirements, we are required to communicate with you and let you know where we are.

In the last couple of years we have put in a state of the art new vacuum system and last year we put in a new filtration system that is also state of the art. This year we put in a

???(couldn't hear) oxygen monitoring system that is going on line. Next year we will put in an oxygen generating system. We have applied for an R & E Grant (Restoration and Enhancement Grant) through Oregon Department of Fish and Wildlife (ODFW). Their new grant application form is not working very well, so we've been on the phone with them for several weeks.

Alexander-Would they prefer a letter of support from the council? (Freedman will find out and let the council know)

Freedman-One section of the application asks for the number of persons that you have conferred with and the number of people that you are going to. We're going to confer with all of the fishermen, city council and commissioners.

They are having a lot of problems-they have a lot of people that are claiming to be 501-C3 who are not 501-C3.

We no longer want to just raise Chinook fall salmon for you guys to catch in the river. We want to raise the biggest, the most, the fattest, we want to kick everybody behinds in the state. We are now clipping every single one of the fish that we raise and we are going to put them with this oxygenation system so we won't have to release the fish because of a lack of oxygen. We're going to keep them and feed them for as long as we possibly can. They will be healthier, we won't waste as much food. There will be more oxygen going into Indian Creek because we're going to oversupply oxygen and food and we're going to raise some big fish that are going to be able to survive better in the river and out in the ocean. We will be able to raise about 5,000 more fish. We raised about 80,000-we're going to try and raise 85,000 - 90,000 - we're going to try and increase it by 60,000 - 65,000 more than the 85,000 that we have been traditionally raising in the past.

The clipped fish are coming back - we've been clipping every fish now for two years, there will be three year olds next year and four year olds the year after. So you guys have to keep track of how many fish you catch that are clipped. We're going to claim every single fish in the river that is caught that has been clipped as an Indian Creek Fish Hatchery fish.

We have been releasing them early because of the lack of water and the temperature of the water. As the temperature of the water goes up and the water flow goes down, the dissolved oxygen also goes down. When it gets down to about 5.8, we're

on a 24 notice to release the fish as soon as our fish biologists tell us to. We're trying to bring them in later and later so the fishing season in the river will go longer. We would like to have returning fish late into October.

Bigger and better smolts will give us bigger and better fish returns and more of them.

CONSENT CALENDAR:

Approval of Council Minutes of 9/28/09 SPECIAL MEETING & EXECUTIVE SESSION; 10/12 REGULAR MEETING; 10/19 SPECIAL MEETING; 10/26 WORKSHOP; 11/09 REGULAR MEETING.

MOTION-> Peterson moved to approve the Consent Calendar as presented, second by Crook. Crook, Brennan, Peterson, Truesdell and Alexander voted "AYE". VOTE 5 AYES

CITIZEN AND/OR AGENCY REQUESTED AGENDA ITEMS:

CURRY HEALTH DISTRICT - Bill McMillan (B)

BILL MCMILLAN CEO-Curry Health District

Prior to launching the (couldn't hear) I've been talking with various groups in the county and other city councils. I would like to recognize your service to the county. This is not a highly compensated position you hold and I'm sure you'd rather be home with your families as with most people here.

There has been some public discussion in the media about what the District is doing. I wanted to close the loop and tell our story.

Two years ago when I took this position with the health district, we conducted a strategic plan and the significant outcome of that strategic plan was the need to recruit more physicians to the county. We used a nationally recognized methodology to determine the supply of physician services and mid level services in the county and then any deficit we have.

We came up with a deficit by 2011 of 12 physicians in the area. That has been the focus of our effort of the last two years to recruit physicians to the area. Progress to date; we have an orthopedic surgeon (Dr. Wright) that practices in Gold Beach and Brookings. Mary Kay Wagner, a pediatrician also splits her time between Gold Beach and Brookings with an occasional rotation through Port Orford. Dr. Bill Fitts, OBG, practices primarily in Gold Beach with a day in Brookings. Dr. McDoogie, an internal medicine doctor, primarily in Brookings. We have a general surgeon that is completing his residency and

will join us in the summer time of next year. There is an internal medicine doctor that is on the horizon if we can get him licensed in Oregon. It is a paper work issue.

The good news is we are bringing doctors to the area. As a result of the new doctor arrivals, we needed to build a building in Brookings because we are out of space in the existing building we have. Hence the acquisition of property on Fifth and the design of a 34,000 square multi specialty clinic that has full diagnostic imaging and a laboratory. The issue of an ER in Brookings is in play with the state-licensing department. The first hearing on that will be Wednesday, so I will be in Portland for that.

People that are residents of the health district frequently ask why we are focusing on Brookings as opposed to taking care of the health district. First of all-a regularitory one-there is nothing with the Oregon Statute Ordinances or Regulations that prevent us doing business outside the district. There is a very good business base for us to do that. Half of our revenue and half of our patient business come from the City of Brookings, so without that support we would not be able to do what we're doing here and in Port Orford. We're bound together whether we love it or not.

The district was created in 1983, after the county hospital almost became insolvent and the management firm of Westworld abandoned this, so we created the district that covers from just north of Port Orford down to around the Pistol River area. We do receive property taxes as part of our revenue. The assessment is .73 cents per thousand dollars of assessed value. That generates, at least in this fiscal year, \$580,000 worth of revenue, which is 2.6% of our overall revenue. It is an important part of our revenue but it is not the whole of it.

I recognize that as district residents we have a say in the matter (couldn't hear) with an elected governess of the hospital. I am sharing this with you because we have a dialog going on right now where residents of the district once they say "do what you need to do in Brookings but why are they not in the health district and helping support that?" I think that is a legitimate issue. The dialog with the people in Brookings is "we don't want to give you the cow for free, we would like you to pay on that".

I believe the issue of annexation will be one the health district pursues over the next six months. This is the wrong economy to ask people to raise their taxes voluntarily and it is the wrong time because the county is looking for a levy of their own, something just under \$3.00 per thousand of assessed value. Personally I believe they should join the district and we'll see where that goes. That becomes a political matter and not one of right or wrong.

To put the Brookings project in a larger context, if you've been to Curry General Hospital, you understand that facility was built in the early 1950's and it is sorely in need of replacement. Despite the fact that we are a municipal entity and do get property tax revenues, because 97% of our revenue is generated by patient service charges-we're like any other business in that aspect. We need that additional revenue that these doctors will generate. Once we're finished recruiting, that will add about 10 million dollars annually to our top line - translates to an equivalent amount in our bottom line. That provides the additional debt service capacity to start re-building this hospital.

This is a critical access hospital. That is a special category that Medicare has designated for hospitals that are in rural areas that have 25 beds or less. We are paid slightly better than non-critical access hospitals. We get our Medicare charges back so it is paid the way things were back in the early eighties.

I'm telling you this because another issue that I hear in the northern part of the county (residents of the district) that if we bring Brookings into this equation, we'll lose our hospital in Gold Beach because there are more people down there, they'll stack the governers and they'll move the hospital.

Within the medical care guidelines of critical access hospital, there are two very important pieces. Medicare says you cannot site a critical access hospital closer than 35 miles from any other hospital, as long as you are on a category one road, which highway 101 is. So that puts Brookings in limbo by virtue of their geography. They are 25 miles from Sutter Coast in Crescent City and 28 miles from this hospital here.

Even if someone showed up with the 30 million dollars you need to build a new hospital, it could not be licensed as a crucial

access hospital. A feasibility study was conducted in 2004- the City of Brookings and the health district participated. It very clearly stated that the only way a hospital in Brookings could be remotely physically possible would it to be a crucial access facility. At the end of 2007, Medicare stopped handing out crucial access hospital designations. In Gold Beach, we are not in jeopardy of losing this facility to Brookings or anywhere else. Indeed, we couldn't relocate that hospital even if we wanted to move it across the street because you are prevented from relocating - you lose your critical access designation. Hence, the rebuilding (couldn't hear) hence the need for the new physicians and the revenue they generate to help with us down there.

We're getting new doctors, we need a place for them to stay, we'll have to create more medical office space here in Gold Beach. This is all very doable. It will result in a new building in Brookings to house these folks but it's all good- we get half our business from Brookings. That in turn drives the revenues that support the rebuilding the hospital here.

We do think annexation is in our future-bringing Brookings into the district. We do not believe it would result in the loss of the hospital. There are ways to structure the governers to allow proportional representation by geography although there are some legal spin we need to go through with that. I'll be happy to answer any questions you may have.

Wernicke-What are the prospects that the government, which it has done to us in other areas, removes the critical care access situation here?

McMillan-Our business is in such a turmoil because of the proposed changes and there is no final bill passed. In our analysis, the Rural Health Association and the Oregon Hospital Association-we see nothing in any of the reform legislation that would impact us. There is a possibility that the way we get reimbursed over the next 10 years might change more towards what we're calling a "pay for play". There is a chance we would be reimbursed based on our outcomes as opposed to just based on having someone in the hospital. I think it is a good thing. If you receive care from us and it doesn't work out the way it should be, we don't bill for that - we don't get compensation for it. I don't see anything in the future that I am especially worried about.

Alexander-Our hospital is grand fathered in as a critical access hospital, correct? (YES)

Brennan-Through this annexation it would allow this district to compete, so to speak, with Crescent City?

McMillan-We are already competing with Sutter Creek.

Brennan-It would bring more revenue up here to this hospital, correct?

McMillan-It would add about a million two to our property tax revenues. We fairly consistently post a 3% operating margin so you can imagine what we have to do with our top line to generate an additional million - million-two in revenue in excess of expenses. It would be a big deal for us.

Peterson-There is an attempt started to have hospital satellite from the larger hospitals over in the valley. I know Sacred Heart in Eugene is going to be making a pitch over here in February. What does that mean to our hospital?

McMillan-For a hospital outside of this to come, they could build a clinic here but they couldn't build a hospital. A hospital is subject to a "certificate of need". We would have legal standing and we would certainly oppose any attempt at building a hospital here.

Peterson-My understanding of Sacred Heart is they want to side with you and have you use them for the things that you can't do.

McMillan-We participate in the Oregon State Trauma system at level four, which means that our main purpose is stabilizing and releasing you or stabilizing and transfer. Sacred Heart is one of the facilities that we send people to. We generally send our cardiac care to Medford because the outcomes of those two groups are excellent. We send most of our major trauma up to OSU because that's the regional (couldn't hear) trauma center. Sacred Heart has a new facility in Eugene.

PUBLIC CONTRACTS AND PURCHASING

CONTRACTING FOR WATER/WASTEWATER/PUBLIC WORKS SERVICES WITH BROOKINGS

Barnes-At this time, we have not completed our certification process that is required for the Water Treatment Plant. Unless

instructed otherwise by the council, we will be looking at continuing this until March at the earliest.

RECENT BACKHOE PURCHASE (C)

The backhoe has been purchased and it was within the budgeted amount.

ORDINANCES AND RESOLUTIONS:

ORDINANCE # 624 (D)

AN ORDINANCE ESTABLISHING PROCEDURES FOR THE CITY OF GOLD BEACH MUNICIPAL COURT

First Reading by Title Only - Second reading will be 1/11/10

MOTION: Brennan moved to approve the first reading of Ordinance # 624, by title only, second by Crook.

Alexander-On review of this ordinance I have some serious concerns in regards to "power of Municipal Court to issue search warrants". To me, this requires a fair amount of balance and training to balance the request against the constitutional rights of the person(s) for which a search warrant had been entered in.

Crook, Brennan, Peterson, Truesdell voted "AYE", Alexander voted "NAY". VOTE 4 AYES 1 NAY

RESOLUTION R0910-5 (E)

A RESOLUTION CONFIRMING THE APPOINTMENTS OF THE PLANNING COMMISSION AND SETTING TERMS OF OFFICE

Wernicke-We've interviewed four-five candidates.

Truesdell-For clarification - we have five people applying for three positions-is that correct? (YES)

Wernicke-Position # 1, # 3 and # 5 will be vacant as of 1/1/10 and expire 12/31/13.

Barnes-Carol Fetzer currently occupies # 1; Tamie Kaufman occupies # 3; Toni Foss occupies # 5.

MOTION: Truesdell moved to (starting with position # 1) appoint Carol Fetzer to position # 1 for the term of 1-1-10 to 12/31/2013, second by Brennan. Crook, Brennan, Peterson, Truesdell and Alexander voted "AYE". VOTE 5 AYES

Wernicke-Position # 3 is an unusual circumstance because of the term limit of Tamie Kaufman and the Charter requirement

that eight years is the max time to be served unless the council finds a vital interest in keeping Kaufman in that position. If it is going to be Tamie Kaufman, the first thing the council needs to do is a vote of "vital interest" and then vote to have Kaufman fill the position.

Truesdell-I move to re-appoint Tamie Kaufman to position # 3 and pursuant to Chapter 12, section 41 of the City Charter, I believe it is in the vital interests of the city to re-appoint Tamie Kaufman. It is imperative that all seats on this committee be filled with qualified citizens, second by Alexander. Truesdell withdrew his motion and Alexander withdrew his second.

Alexander-I move that the city determined that it is in its vital interest that position # 3 on the Gold Beach Planning Commission continue to be held by Tamie Kaufman, second by Truesdell. Crook, Brennan, Truesdell and Alexander voted "AYE", Peterson voted "NAY". VOTE 4 AYES 1 NAY

Alexander-I move that the council appoint Toni Foss to Gold Beach Planning Commission, position # 5, second by Truesdell. Brennan, Peterson, Truesdell and Alexander voted "AYE". Crook voted "NAY". VOTE 4 AYES 1 NAY

MOTION-Truesdell-I move that the council reappoint Tamie Kaufman to position # 3 on the planning commission, having found a vital interest to the city, second by Alexander. Crook, Brennan, Truesdell and Alexander voted "AYE". Peterson voted "NAY". VOTE 4 AYES 1 NAY

MOTION-re ORDINANCE # 624 - Brennan moved to approve the first reading of Ordinance # 624, AN ORDINANCE ADOPTING PROCEDURES FOR THE CITY OF GOLD BEACH MUNICIPAL COURT by title only, second by Crook. Crook, Brennan, Peterson, and Truesdell voted "AYE". Alexander voted "NAY". VOTE 4 AYES 1 NAY

RESOLUTION R0910-9 (F)

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT TO IMPLEMENT A HOUSEHOLD HAZARDOUS WASTE MANAGEMENT PLAN

MOTION-Alexander moved to approve Resolution R0910-9, A RESOLUTION AUTHORIZING THE MAYOR TO IMPLEMENT A HOUSEHOLD HAZARDOUS WASTE MANAGEMENT PLAN, second by Brennan. Crook, Brennan, Truesdell, Alexander voted "AYE", Peterson voted "NAY". VOTE 4 AYES 1 NAY

Barnes-By entering into this agreement, they would like a representative from Gold Beach to serve on an oversight committee. I'm asking the council if they have any insight as to whom they would like to serve on this committee.

Alexander-At this time I am the liaison to the solid waste and recycling committee so I do have some familiarity with this and if the council wishes, I will take on that responsibility as well. (Council concurred)

RESOLUTION R0910-10 (G)

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A FUEL EXCHANGE AGREEMENT WITH ODOT

This was tabled to allow council more time to review the actual agreement. It will be on the January 11, ~~2009~~ agenda.

2010

MISCELLANEOUS ITEMS:

GOAL SETTING

Wernicke-This council spent a year going over a lot of inter-city administrative problems, trying to get things organized and they've done a very good job. We're now in a position to fulfill our visionary role. That would be setting goals for this city, not just short term but for some distance in the future. Before we start the discussion, there is a class offered by the League of Oregon Cities that might be beneficial for at least some councilors to take. The class is called "Strategic Planning and Goal Setting". It is a one-day class but it takes all day. Dan Bartlett, who has more than 37 years of government and non-profit experience, puts on the class. The courses are: January 6, 2010 in Woodburn, January 15th in Newport, February 17th at Cascade Locks, March 2nd in Bend and March 19 in Pendleton. In March, Bend and Pendleton are tough to get to. It is \$150 fee to attend the class and there is a possibility that we could get scholarships for the council members that might want to attend because we are quite a distance from any of the classes and they tend to pay some of the overhead in cases like ours. Each councilor does have a travel line item in the budget.

We can start a list and contact the League and see if we're available for any scholarships.

A brief discussion ensued regarding the different dates and locations. Goal Setting dates were scheduled for 1/25/10 and 2/22/10 to allow time for council to attend the LOC class.

SECURITY DOOR/FIRE CODE

Peterson-The door between the council room and the hallway must remain unlocked at all times.

Wernicke-I think there are going to be some changes in configuration. The Administrator and I are going to change offices and her current office will become a conference room with access to the outside. The Mayor will take the smaller intermediate office (planning office). This will allow the EXIT sign to be moved over to the north door.

We would have to have the (north) door open the other way. We have two exits in the room. When you change the EXIT to the door leading to the administrator's current office, it is very clear how to exit the building-the exterior door is in plain sight. Using the current exit door on the south side, you exit into the hallway and there is no visible outside exit door.

Peterson-Before we start doing any changing at all we need to get either a fire marshal or someone that is actually involved in this type of thing to advise us. We're making major changes and we're not thinking it through. This should have never been done without us thinking it through. We should have someone from the county or the state come in and advise us before we do anything else. **Barnes** (of course we will)

Truesdell-As a follow up before we do anything else-understand the costs of getting electrical up above that door to have a properly lit sign, moving doors so they open outward. These are probably not major expenses but they need to be determined. The improvements that have happened so far are now an expense to the city and now we're trying to remediate that by spending more money.

KNIFE RIVER ARBRITRATION

Alexander-My understanding was it was the engineer's feeling that this should have been a "slam dunk".

Barnes-The issue involves the delivery of some gravel-rock that was used for sub surface. It was in our specifications that the materials had to meet two particular specifications. The companies that provided the bid hired a sub-contractor. That material was rejected. That is the material they bid with. I wasn't here when this happened so I am going by what was described to me. They said "OK, we have another product, they shipped us this other product and it was approved".

There is a cost difference between the two products. The one that was approved was a more expensive product. They billed the city for the more expensive product. We said that was in the agreement and we shouldn't have to pay for the more expensive product.

They decided they were going to bill the city for time delay and back charges between the contractor and sub-contractor. That was the arbitration that actually occurred. Those were the main issues. We were asked to pay for the cost of (couldn't hear) material. They were saying it was more expensive for them to dig up the material and deliver the material, so there was another cost increase. They said they were being back charged by the primary contractor, they were billing us for that. The primary contractor was asking for time delay. The net result was they were asking for \$70,000 from the city. We went to arbitration. What came out of arbitration came down to the specifications. They had provided a sample and in providing their sample, they provided paper that said the sample meets the particular criteria for the specifications.

We had no disagreement that it met the first specification. The disagreement was on the second level of the specification. You have to realize the arbitrator did not provide us the reasons for his decision. What I am giving you is what I believe occurred as a result of the arbitration. The information I have provided to the council is all the information I have.

The discussions focused on that second set of specifications. From the arbitrator's discussion, it appeared he didn't think it was necessary to have that second set of specifications. Furthermore, we had no way of telling the supplier when they met that second level of specifications. We didn't have any criteria in there saying "ok, once the sample you provide meets x percentage of elasticity or x percentage of fine particulate". We didn't provide those thresholds. It wasn't in the specifications, so there was no way for the supplier to know how they could have met that second level. I believe that is another indicator of why this didn't occur.

The supplier provides the material, sample and paperwork. There was discussion whether or not the paperwork they provided which is dated 2006-07 is over dated material. There was discussion whether that was the sample that was just

taken. There was no way we could prove either way that that was the date on the sample or not.

When our engineers looked at the sample and disqualified it, did what they call a rough shake test. They put the materials- spin it in water, shake it to get a sense of how many (couldn't hear) particulates are in it. From that visual example, they denied the sample. That is a visual subjective assessment of the material.

The supplier was saying we provided you with paperwork that had "here's the percentage", everything for a certified laboratory. Again, there was confusion. That's what I'm saying-it was complicated.

The sample comes from the pit. The argument is it has been there for thousands and thousands of years-it's not going to change, it comes from a certified, qualified laboratory. Whereas, we just did the shake test. We didn't run it through a certified, qualified laboratory because that wasn't our requirement. In our specifications we required the suppliers to provide the certification.

By the time they gave us the first sample and we rejected it and they replaced it with a second sample within about a weeks time. That's when all of this occurred. We had the second sample and we said "yes, move on".

The arbitrator didn't feel there was very good communications between us, the contractor and the supplier. The end result of the claim is we had to pay \$48,000 and that was the cost difference of the material that they initially supplied and the material that was eventually used on site. Nothing else. We did not pay for the additional expense to get the material, we did not pay any of their attorney costs, we did not pay any of the back charges, we did not pay any of the late fees, and those were all denied. The arbitrator basically said you denied the product that they showed met the specs, you demanded a different level that was more expensive-you're just going to pay that cost difference.

Alexander-Are you going to get an official report from the arbitrator at some point in time?

Barnes-No and we are not allowed to contact him.

Wernicke-When you go to binding arbitration, by contract, unless you specify, an arbitrator is not going to have to identify exact grounds of the ruling.

Truesdell-I understand the process. Your email was very detailed and that's what first got me excited about this whole event. I'll call them consulting engineers because I can't think of anything else to call them.

The consulting engineers that the city paid for in good faith designed specifications that were apparently not well specified. The city paid for 100% of services, it got something that in the arbitrator's opinion left a doubt. The consulting engineers, that the city is paying for, rejected the material. The consulting engineers, when this came to us a few months ago, advised us, because I brought up the potential that they are going to have attorney at this arbitration-shouldn't we have one? We were told rather emphatically by our consulting engineers that this is a slam-dunk; we don't need that kind of representation - that it would be a waste of money.

So we are left with a \$48,500 claim against the city for something that we paid the consulting engineers to do a good job specking - specifying and they didn't. We didn't ask them to reject the material-they did.

We should be making a strong claim (not a lawsuit) to the consulting engineers to go ahead and absorb this cost. This is nothing the city had anything to do with, it is based, in my opinion, their lack of detail, their incompetence, I don't want to state it that strongly, but almost - \$48,500 - this is not anything this council did. It's not anything the citizens did. The citizens in this city shouldn't have to absorb mistakes of very well paid consulting engineers.

Barnes-This occurred back in May or June, before I was hired so I do not know if the engineers attempted to communicate with the city regarding the rejection of the sample. That would be my only cautionary to you-there could have been discussions-I honestly do not know.

Peterson-I think you should go ahead and make the claim and make them prove that there were these discussions. We're saying we got a bill for \$48,500 to the city- why? If they had done their job properly, we wouldn't have received this

bill. If there was conversation before the administrator was hired, fine, make them prove it.

Wernicke-One of the problems you're going to have with this is if the arbitrator didn't specify in his ruling the reasons for awarding this amount of money, he didn't say our engineers did wrong or right or anything like that. You're going to be left without any way to factually establish who made the mistake in this thing.

Peterson-We hired an engineering firm. Somewhere down the line, someone let this thing slip through the cracks. Was it us, or was it our engineer?

Wernicke-You normally don't have someone prove they didn't do something, you are normally compelled to prove that they did. The burden of proof is on the party that is making the claim.

Peterson-We're the ones writing the check to the engineering firm. I think they should prove to us that we owe the \$48,500, not them.

Barnes-I can request the engineering firm to speak to council.

Wernicke-If they want to send someone into the lion's den-that would be a great idea and we could discuss it. But it is my recollection that it was the architect that said "this is a slam dunk". (correct) Seems like he was talking about a different issue-like this is what he specified in his requirements, then the engineers approved it and then it went on from there.

Barnes-Maybe this will be productive. We had to pay the claim-we had no choice. Perhaps we can set up a workshop just on this topic, with the architect and engineer. Again, I am giving you my perspective of what the discussions were. Having all of us in one room to talk about this issue would be a valid, helpful thing to do.

Truesdell-Before we set up a meeting, (I appreciate the fact that you (Barnes) weren't here then) - I don't even know who is running the show for this entire rebuild of our wastewater treatment plant. There is a pyramid and at the top is someone and they are managing several people and those people are managing several people and so on and so forth, all the way down to the people doing the work. I think it would be a benefit to the council to get a flow chart. These are the

people that designed the specifications. I could be speaking totally out of school in terms of "it was that person that rejected", and it was that person that said "don't worry about it" - that would be a good starting point because we may look at this flow chart and see the areas of responsibility. We would see the different firms at different times doing different things, in which case maybe we don't have a basis to go to anyone and say "we feel it is your responsibility". Yet, if all the dominos do line up conversely, by the time we do sit down and talk with those key people, we will have some real strong basis to compel them if we understand that flow chart better.

Barnes-For clarification-the flow chart you are talking about would be who is responsible for various aspects of the project?

Truesdell-That would clarify things in my mind. I know the group of people sitting up here and the citizens, who will be the beneficiaries of this project, had nothing to do with any of this. I know other persons that are getting paid very well by the city did. It might be of benefit or help to see who those different persons or companies were. From the people who designed the specifications, to the people who approve the design of the specifications, to the people who rejected the rock, to those that sat in front of this council two months ago and said "don't worry, this is a slam dunk". The big thing is we are stuck for \$48,500 and I would like to see someone else pay for that if possible.

Wernicke-The architect and engineering firm are the ones that addressed the council a couple of months ago-that's who we need to meet with again.

Barnes-In this particular case, the rock was rejected by the engineering firm.

Alexander-concurred with Truesdell and stated the flow chart would also be helpful in the future as the project progresses.

MOVE TO OLD LIBRARY

Truesdell-This was previously discussed in an email but for the sake of all councilors and the citizens (I first became aware of this through a citizen in the community)-It is my understanding that at one time, certain members of staff (CA) may have indicated that we might be interested in apparently moving our police department to another location. And maybe

sharing community rooms with other police departments and apparently that is not the case-that is not being pursued.

Barnes-Correct. When I first arrived, it was an idea. It was not even being talked about. Here's a concept-we discussed the concept one time back in September and that was the last I was aware of it until I was approached by a couple of councilors inquiring recently. I was unaware that anything had gone further.

I spoke to the chief of police and he indicated to me that it has not gone further.

Alexander-I didn't bring the library board minutes with me, but as I recall, there were discussions as late as November on this situation. I am wondering how discussions could continue as late as November at the board meeting of the library and be a dead issue?

Barnes-I can't answer that-I'm not on the library board. All I can say is we discussed it one time in September and that was the last I heard of it until two weeks ago when Councilor Peterson asked me about the topic. I was unaware of anything happening. I followed up with the chief of police and he indicated he is not continuing negotiations. I have read the minutes-I don't know why they are continuing to discuss it. I have not been involved in this beyond just the one walk through in September. I basically told him (Janik) that we're not in a position to do any thing with this. If he was interested, I told him to get me more information so I can bring it to council to see if council would be interested in the idea. That was the last I heard of it until recently.

CITY ADMINISTRATOR'S REPORT (G)

Barnes-Updated the council (attached as G)

Police Services

1. New Hire Officer Jeff Wood
2. GBPD officially enrolled in the International Association of Chief's of Police Volunteers in Police Services program.
3. Janik completed training to receive certification for Doppler and Lidar radar for traffic enforcement.
4. GBPD requested use of Oregon State Police polygraph examiner.
5. Submitted a grant request to ODOT for three traffic radar units. (Janik didn't realize the request needed

to go before council for applying-he will conform to the grant policy in the future)

Promotion and Visitor's Center

1. Bio Swale redesign at Visitor's Center
2. \$10K update
3. Begin Valentines Day Weekend promotional campaign
4. Completed basic promotions program and visitor center operations assessment with recommendations for operational improvements

Planning

1. Skate Park Update

Public Works as follows

1. OPS Building Update, Cost for Delays
2. Wastewater Treatment Plant-Funding, RFQ's, Schedule
3. Sebastian Shores Update
4. Port Water Main Insurance Claim
5. Signal Upgrades and Improvements on Riley Creek

To avoid having the financial problem the city just incurred due to arbitration, a discussion was held regarding protection for the city, hiring an attorney vs. not hiring one-using USDA as a resource-checking with other cities that have completed their plant project to find out what kind of protection was written into the various contracts.

Administration and Finance

1. Financial Reports-Questions on Muni Court expense were answered by Barnes
2. Status of Committee Appointments
3. CA will attend Local Budget Training on 1/5/10-scholarship received
4. City hall access-Administrator will provide list of people with keys to different areas of city hall
5. Check and document signing authority-a policy will be drafted

MAYOR AND COUNCIL COMMENTS:

COUNCILORS:

Jeff Crook-Welcomed McKenna Marstall as Student Liaison-our community will be better served for it.

Larry Brennan-Also welcomed McKenna Marstall as Student Liaison. I've heard some things tonight which give me some hope that things are going to move along in the right direction. There was dialog between the city administrator

and council as far as request for information. Things that we wanted to find out that she (CA) will have time to prepare for our next meeting.

I also noticed that there was at least five different times where there was a quote that "a councilor requested this information". Yet, the rest of the council doesn't know what that information is. I think that kind of procedure is detrimental to the city, the administrator's time and her responsibilities. We don't seem to hesitate at all to postpone agreements or resolutions and yet we don't seem to want to take the time to bring it to public discussion and have that question addressed to the city administrator. Rather we do it on an individual basis and it doesn't validate the request for the other councilors. I would like to see that if we have a request(s) for information that we do it as a body, as a council, verses individual councilors.

Merry Christmas to everyone.

McKenna Marstall-I'm excited to be here. Thank you. Winter sports are starting with a basketball game tomorrow. There is a band concert on Wednesday-it would be nice if you could all attend. Friday is when we go "on break".

I brought a couple of copies of our redesigned school paper if anyone would like to see them.

Peter Peterson-Welcomed McKenna. I used to be able to walk up to the office and ask for a copy of the minutes or paid expenses. Now I go to the recorder and she says "no, I need to get the city administrator's OK first. Now, if I'm Val Corley, I can go up and ask for those minutes and Val gets them. Why have I become a second rate citizen because I'm on the council?

Barnes-My answer is the fact that you operate as a council body and I have to make sure that what one councilor receives all councilors will receive the same information. That is one of my job responsibilities. You all have to operate from the same body of knowledge.

Peterson-Then I can request it from the recorder and she can tell you I requested it and everyone gets it?

Barnes-Yes, as long as it is a public document. But I need to be aware of it because I have an obligation to all council

members to ensure that when one council member asks for something that all of you have the same body of information from which to work from.

Peterson-I feel that as council, we have a right to ask for information because we may have a question we want an answer to. And we can possibly get it just by asking for the information.

Barnes-Yes. Any citizen has the same access. It's just that you are a little bit different because I have to treat you as a group and try and be as equitable as possible. Yes, you can have the information but just realize I will have to be distributing that to the rest of the council. You're going to get these bizarre messages every now and then of why I'm getting this-I'm trying to give you a heads up that a council member has requested this information and that is why you are receiving it.

John Truesdell-Welcomed McKenna. I've been employed by the city for one year now. It has been an incredible journey so far. I want to thank the citizens for putting their faith in me. I'm still a junior up here but I am well seasoned-I won't go any further than that.

In response to Councilor Brennan's concerns about requests for information. I do agree we are a body and I do agree with the city administrator. It's not our job to overburden the city administrator, then again, holding out, and an easy way to do this is: If I come in and ask for a copy of an ordinance - if I am asking for information that does not require assembly - no assembly required-no battery required. Perhaps just a memo that one councilor came in and asked for Ordinance # 325 and that's all it should take. It shouldn't be a burden on you or your staff. If it is then certainly, if it requires hours of assembly time, then that is something I agree with-with all of us up here-that it should go through the council as opposed to a simple request for something that is already there.

I'd like to thank the council for my first year-the junior members as well as the senior member and wish everyone a Merry Christmas and we'll see you in the New Year.

David Alexander-Welcomed Ms. Marstall as student liaison and commended her for her school report. We appreciate your service.

In response to the issue of asking questions: I consider asking questions on matters involving the city, not only my right, but part of the responsibility I took on when I took my oath of office. I can understand why, if I make a request, and I usually try to include in my request that I would like the council to get whatever I ask for but to hold back on requests until the monthly meeting so we can all ask the questions in a meeting process seems to me to be counter productive in getting information that might simply allow me to resolve a question that has come to me from a constituent. We could do all this and compile whatever questions we might have and then ask them once a month but, as I say, it seems to be counter productive that way.

Reminded everyone about the "giving tree" with tags on it in the lobby of city hall-pick a tag and help make someone have a better Christmas. Commended Councilor Peterson for spending all day Saturday shopping for things from that tree. This is sponsored by the Oasis house. These gifts go community wide.

I have been nominated for the South Coast Community Resource Board Council. I intend to be on that board. At the moment, one thing the Resource Council is promoting an cook book they have produced. It is \$15. I am contacting local businesses to see if they will provide a space to display and sell the books.

Mayor Jim Wernicke-Welcomed McKenna Marstall. Having someone from the high school attend our meetings and be involved in city government is a great idea.

It would be beneficial if individual councilors didn't make a lot of requests of the city administrator, personal requests. As the city administrator has indicated, she has to deal with the council as a "body". That's our rules, that's the law, that's our charter.

It would be very helpful if individual councilors could exercise some restraint in asking for particular items to be on the agenda, by email, during the course of a month's period of time. Or stopping in and saying "Look at this - I want this and I want that" as a personal individual council matter. It really should come from the council.

Wish everyone a very Merry Christmas and we'll see each other again next year on January 11th.

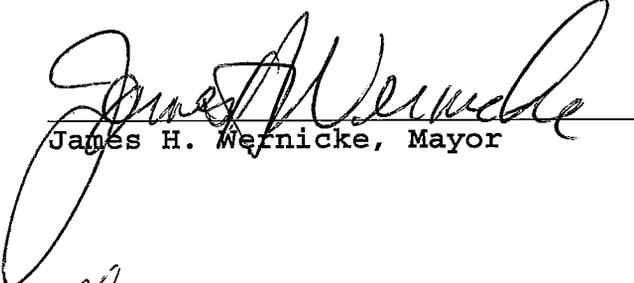
ANNOUNCEMENTS

The next regular meeting for the Gold Beach City Council is scheduled for Monday evening, JANUARY 11, 2010 in the Council Chambers of City Hall, 29592 Ellensburg Ave., at 6:30 P.M.

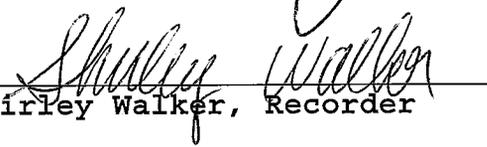
ADJOURNED at 8:50 p.m.

The location of the hearing/meeting is accessible to the disabled. Advance notice is requested if special accommodations are needed. Call (541) 247-7029 so that appropriate assistance can be provided. The City of Gold Beach is an affirmative action EEOE and complies with section 504 of the rehab act of 1973. Complaints of Discrimination should be sent to: USDA, Director, Office of Civil Rights, Washington, D.C. 20250-9419

Passed by the Gold Beach City Council on January 11, 2010.


James H. Wernicke, Mayor

ATTEST:


Shirley Walker, Recorder