

CITY OF WHEELER

CITY COUNCIL – DECEMBER SPECIAL MEETING MINUTES

December 6th, 2023

Call to Order

Mayor Kemp called the meeting to order at 6:04 PM.

Roll Call

Present onsite:

City Council: Councilor Deanne Ragnell, Councilor Heidi Stacks, Councilor Gordon Taylor, Councilor Karen Matthews, Councilor Walt Porter, Mayor Clif Kemp

City Staff: Pax Broder

Guests: Jennie Bricker, Ken & Lynn Ulbricht, Mike Anderson, Dan Ayers, Sandy Douma, Mary Leverette, Mike Glowa, Jack Thayer, Ray Steele, Sean Erickson, Cynthia Simmons, Gary Andes, Jane Geason, Mark Camack, Carl Whiting

Present via Zoom:

Guests: Carrie Richter, Juliet Hyams, Kara Hall, Mark, Jack Blysmas & Lauren Rasmussen, Melyssa Graeper, Neil McKinney, Dana, Caroline Crisp, James Feldman, Barbara Wilson, Margie Neilson, Denise Donohue, Schuman Phone, Kathleen, Ipad 2, Margaret Thomas, Jo Newhouse

City Staff: Phil Chick

Consent Calendar

Councilor Matthews **made a motion to approve the City Council Minutes of 11-7-23.** Councilor Taylor **seconded the motion. The motion was passed 5-0** (Yes: Matthews, Ragnell, Taylor, Stacks, Porter; No: none).

Councilor Matthews **made a motion to approve the October Financial Report.** Councilor Stacks **seconded the motion. The motion was passed 5-0** (Yes: Matthews, Ragnell, Taylor, Stacks, Porter; No: none).

Presentations, Guests, Announcements

Kara Hall gave a presentation about the Nehalem Bay Transportation System Plan (TSP).

The presentation is included in the Agenda Packet.

Councilor Matthews stated that the council had multiple meetings with this team to refine this plan, and their questions were addressed at that point. She had no further questions.

Pax read Ordinance No. 2023-05 (Comprehensive Plan Amendment and TSP Adoption) out loud in its entirety.

Public Hearing #1 – Comprehensive Plan Amendment and TSP Adoption

Mayor Kemp opened the Public Hearing and asked for testimony for and against the Comprehensive Plan Amendment and TSP adoption.

Mary Leverette stated that she applauds this plan. Its comprehensive manner will serve not only pedestrian and commercial traffic, but it will help with Wheeler's emergency preparedness as well. She urged Council to adopt this plan as written.

Councilor Porter asked how many of the projects on this plan the City would be responsible for. Pax clarified it is a guiding document that can assist us in getting funding for these projects as that funding becomes available.

Councilor Matthews stated that having these projects documented in a comprehensive plan gives the city credibility when applying for grant funding from various agencies. Statements in the Comprehensive Plan can also guide the Planning Commission on decisions related to those goals.

Caroline Crisp of ODOT stated that the reason they encourage this kind of infrastructure is because it reduces crash and conflict points. A lot of these grants will come from the Federal Highway Administration, ODOT, and Travel Oregon, etc. She stated that the City may be required to provide a match with some of the funding opportunities.

Mayor Kemp closed the Public Hearing.

Councilor Matthews **made a motion to adopt Ordinance 2023-05 with amendments to correct dates/typos.** Councilor Taylor **seconded the motion. The motion was passed 5-0** (Yes: Matthews, Ragnell, Taylor, Stacks, Porter; No: none).

Public Comment on Non-Agenda Items

None

City Manager and Public Works Department Report

A verbal Public Works Department report was given by Phil Chick over Zoom. Public Works staff has been busy keeping up with seasonal duties focusing on storm drainage and road cleanup. They were able to get a boom log installed at the boat ramp that seems to be working as it should to prevent debris accumulation. They will add one more stick to span the two current logs and provide extra stability. Phil extended a thanks to Craig Stacks for helping Ron and him get the boom logs in. There was a service line break in early November, which was found with the Kamstrup meter system. They were able to pinpoint the location with Manzanita's listening device. Phil wanted to give kudos to the City for buying these meters, it has saved a lot of water in different circumstances.

The downtown area by Rector and Gregory Street flooded about 5:15pm yesterday (December 5th). Rain began to fall Monday. Staff was keeping up with checks on vulnerable stormwater points during the day and through the night. Checks were necessary every two hours on Tuesday due to the amount of rain coming down. The Gervais Creek weir was checked and confirmed to be clear at 4pm. Katie at the Old Wheeler Hotel called Phil at 5:15pm to notify him of flooding on the roads, the Post Office, and water crossing Highway 101. Phil arrived and assessed the situation, and then called Dan Weitzel of Manzanita's Public Works for assistance. Very quickly they had a crew together ready to help out. Phil stated that "to say they had our back would be an understatement." They were able to work their way through the floodwaters up to the weir with an excavator and cleared the blockage. They were also able to pump out the water from the streets with a mobile pump. Today the mud was all cleaned up. Tillamook County Emergency Manager Randy Thorpe declared this event a disaster. Wheeler Emergency Team was involved and helped keep track of all the happenings. There should be an opportunity to receive some financial aid for this disaster. The City learned some things going through this event. Phil pointed out that this blockage was caused by a landslide about 20 yards up from the Gervais Creek bar screen. Clay, boulders, wood debris, etc. closed off the pipe inlet. The good news is Tim Gross of Civil West Engineering was here today and looked at options for a new basin. He is one of the engineers who

created the overall plan to fix this area with the FEMA grant we are awaiting the final approval on.

Councilor Matthews stated that she was in the Post Office at 5pm and there was no water, but by 5:15pm it was inundated so things happened very fast. She thanked Phil for being the first one on the scene and getting right to work. The prior Thursday Councilor Stacks had given the Councilors and City Staff training on what to do in an emergency, so they got to test that knowledge.

Those in attendance at the meeting gave a big round of applause to Phil.

Mayor Kemp gave his appreciation to the Public Works agencies, the Nehalem Bay Fire and Rescue, and to Councilors Matthews and Stacks for all their help. He mentioned that there are property owners in town who are still dealing with the fallout. It was not predictable for a slide to come down a plug the weir like that in a matter of minutes, but it is mostly cleaned up now.

Councilor Ragnell asked if the system would hold up if we had another atmospheric river event.

Phil responded that as long as Public Works get out there every few hours to clear the sticks and twigs in a major storm, the weir will continue to flow. It's when those regular checks aren't done and the debris builds up that there is an overflow. There was an acute failure this time with the landslide, but in general Public Works staff should be able to keep up with one of these atmospheric river events.

Councilor Matthews asked if there is anything we can do to prevent further landslides when we do the overall Gervais Creek hazard mitigation project. Phil confirmed that at any point part of the hill could slide down into the creek. Tim Gross had mentioned a possible change to the shape of weir grate that could help prevent blockages in the future. An alarm system that would let Public Works know the weir is getting blocked up and the water level is rising could be helpful in mitigating damage to downtown.

The City Manager report was read. *A copy is available in the Agenda Packet.*

Councilor Matthews **made a motion to allow the city to work on grants with the Salmonberry Trail Foundation.** Councilor Ragnell **seconded the motion.** **The motion was passed 4-1** (Yes: Matthews, Ragnell, Taylor, Stacks; No: Porter).

Public Hearing #2 - LUBA No. 2022-002 Remand

Mayor Kemp stated "This is a hearing regarding a Design Review application to construct a building that includes processing, storage, and retail sales of fish and shellfish for property identified as TL 400, 4600, 4700, 4800, Map 2N10W2BC. This matter will be reviewed against the criteria of Wheeler Zoning Ordinance Section 11.050, Section 11.111, Article 2 and Article 3. This is a de novo hearing meaning that the City will consider new evidence. This matter is also one that is on remand from the Land Use Board of Appeals as well as the Oregon Court of Appeals. The City's consideration of this matter will be consistent with and focus on the requirements identified in those previous court rulings."

Mayor Kemp then opened the Public Hearing.

Mayor Kemp asked "Does anyone object to the jurisdiction of the City Council to hear this appeal at this time?" *There were no objections.*

Mayor Kemp asked “Does any Councilor believe he or she has a personal bias to declare?” *There were none declared.*

Mayor Kemp asked “Does any Councilor believe he or she has a conflict of interest?” *There were none declared.*

Mayor Kemp asked “Has any Councilor had any ex parte contacts or made a site visit?” Councilor Matthews mentioned that she met with the applicant’s attorney at the November 1st meeting. Councilor Taylor mentioned that all councilors have visited the site. *There was general agreement on this point.*

Mayor Kemp asked “Does anyone in the audience wish to question the Council about these disclosures?” *There were no questions from the audience.*

Mayor Kemp then requested a Staff Report.

Pax presented the following verbal Staff Report:

“On November 1st, 2023 at 2pm City staff met with BMLLC Attorney Jennie Bricker at Wheeler City Hall, 775 Nehalem Blvd, Wheeler, OR 97147. In attendance was City Manager Pax Broder, City Planner TJ Fiorelli, City Mayor Clif Kemp, City Council President Karen Matthews, and Attorney Jennie Bricker. The following items were discussed and design recommendations were given for:

- 1.) Safety of pedestrians in the parking/walkway areas; physical separation of pedestrian and commercial/industrial traffic.
- 2.) Monotony of the design, aesthetics, and similar buildings in the area. Wood siding and style of the building were discussed including changing of roofline, recess, window size or location in order to break up the monotony.
- 3.) Address and define the courtyard/plaza entrance to ensure sufficiently sized open space designed to include "street trees, outdoor seating and decorative pavers" for use by visitors and employees.

A Staff Report was prepared and made available 7 days prior to tonight’s meeting and was based on the most up-to-date information we had at the time, which was the applicant’s supplemental statement and appendices from August 4th, 2022. Additional supplemental information was received from the applicant on December 1st, 2023. Staff concerns included:

- 1.) No dimensions were provided for the courtyard area and we encountered difficulty printing the drawings at a measurable scale so we asked the applicant to bring those drawing in this evening.
- 2.) East Elevation shown on DR.02 doesn't match the perspective sketch shown on DR.04 and showed a different door and window alignment.
- 3.) The west elevation shows a rollup door but is indicated to be for foot traffic only.
- 4.) Several black rectangles on drawings DR.01 and DR.03 appear to possibly be text boxes, however we were informed by Ms. Bricker that those were obsolete and blacked out on purpose.

These concerns were communicated to Ms. Bricker via email in the hopes that they could be addressed this evening. The City has also received written testimony from Mark Nelson

and The Oregon Coast Alliance. Printed copies have been provided for the Councilors this evening on the table in front of them.”

Mayor Kemp stated “The pertinent criteria to be considered by the City Council are identified in the City’s previous decisions considering this matter; Testimony, arguments and evidence must be directed toward those criteria or other criteria in the Comprehensive Plan or Zoning Code which the person testifying believes to apply to the decision; Failure to raise an issue accompanied by statements or evidence sufficient to afford the decision maker and the parties an opportunity to respond to the issue precludes appeal based on that issue. In addition, failure of the applicant to raise constitutional or other issues related to proposed conditions of approval will preclude an action for damages in circuit court; Persons who testify shall first receive recognition from the Mayor, state their full name and mailing address, and if appearing in a representative capacity, identify whom they represent.”

Mayor Kemp then asked “Is there a presentation by the applicant at this time?”

Jennie Bricker (attorney for Bott’s Marsh LLC) stated that she wanted to provide some context to make a couple of points. She said she wanted to rely on the materials submitted December 1st as well as the drawings she provided this evening, which should be to scale. She stated that “it is important to put this in a larger context.” She explained that the City and Bott’s Marsh LLC are in litigation in federal court and are in a mediation process, trying to come to an agreement for something to build on this property. The settlement that has been discussed would involve some kind of zone change for the property, which is currently Water Related Commercial and Water Related Industrial. The proposal being considered tonight (the Fish Processing Plant) spans two zones in the same building. The mediation discussions envision something different, and much closer to the original proposal from 2019. That proposal was a combination of conditional uses and was originally approved by the City Council.

Ms. Bricker stated that a change in the zoning of the industrial property would allow the applicant to develop the northern part of the property into a residential cottage cluster. The applicant hopes to work out the specifics of the proposal and the City has a draft of the agreement that was circulated back in October. Ms. Bricker is optimistic that the applicant and the City can come to terms. If the development agreement can be finalized, the applicant would agree not develop the project being considered tonight (the Fish Processing Plant). The reason the Fish Processing Plant proposal is before the City Council now is because it is allowed outright in the zoning. The applicant would rather wait for the development agreement to be negotiated and wait for the zone changes, other approvals, and land use actions that would be necessary in order to proceed with that other commercial/residential development.

Ms. Bricker stated that it is not economical to leave this property undeveloped. If they are not able to negotiate a development agreement, the applicant would fall back on the Fish Processing Plant proposal that is permitted outright, and over time would develop the rest of the property for other industrial uses. Ms. Bricker considers the proposal tonight to be “hypothetical” and a “plan B alternative,” but stated that it is real and they do want council to consider it. She hopes this can be an iterative and collaborative process. She has already exchanged emails with the City Manager and he has been engaged and is familiar with the review criteria. She hopes it would be possible to resolve any concerns the Council may have or any inconsistencies. She mentioned that the City had informed them that the east elevation on Sheet 2 is inconsistent with the perspective sketch on Sheet 4. She asked that the council rely on Sheet 4 for the configuration of doors and windows on the east elevation. The narrative mentions a canopy, but that won’t be in the final design unless the Council wants it. Ms. Bricker stated that the applicant is flexible and is willing to make

changes, and invites the Council to tell them what they think. They invite further collaboration and can pencil in other changes right now.

Councilor Ragnell confirmed that we are discussing the issues for which the application was remanded by LUBA, not the other development options. Ms. Bricker agreed, but mentioned that LUBA's remanded issues were general guidelines.

Councilor Matthews mentioned that the traffic safety issue was a big one.

Councilor Ragnell mentioned that the mismatched drawings for the east elevation were puzzling. Ms. Bricker stated that some of the inconsistency is because they used the drawings that were submitted in August of 2022 but with a new architect working on them.

Ken Ulbricht said he discussed this with the architect and that the image on DR.04 is what the correct east side door would look like. He stated that it would be fine to impose drawing DR.04 as a condition.

Councilor Matthews asked if this was an open bay warehouse or if it is two separate floors. Ms. Bricker mentioned that in the meeting on November 1, the city suggested taking the architecture from south elevation and having that same kind of element on the east elevation to make it more architecturally interesting. She confirmed that the warehouse is a large single-story structure but that it does have protruding areas on the second floor that overhang empty space outside.

Councilor Ragnell asked which door was the primary entrance. Mr. Ulbricht stated that it is still on the south side of the building. He clarified that the primary entrance to the retail area is on the south side, but the primary entrance for receiving delivery trucks would be on the north side.

Councilor Ragnell said there is a secondary entrance on the west side shown on DR.01. Mr. Ulbricht said that door can be removed. Ms. Bricker confirmed that the primary entrance for visitors to the building is on the south commercial side. Councilor Ragnell said on the north elevation (DR.03) the loading doors are identified as secondary entrances. Ms. Bricker mentioned this is a glitch from the previous drawings that were used in August and that a new architect picked up. This should not have been referred to as a secondary entrance.

Carrie Richter mentioned she'd like to allow Mr. Ulbricht an opportunity to go over design changes. Mr. Ulbricht stated that he removed the loading dock from the east side of the building and put it on the north side with its own separate access. He removed any "delivery stuff" from the west side of the building. He said there is now a pedestrian walkway all the way around the parking lot. He said he is amenable to putting a hedge around the courtyard/plaza if needed. He stated that they changed the west side elevation and gave it more architectural components. There is batten board siding and shakes that are both natural wood.

Councilor Mathews asked for clarification as to which shading in the drawing was which type of siding. Ms. Bricker indicated that the lighter areas are the batten board and the darker areas are the shake siding.

Councilor Ragnell asked for samples of the materials used for siding. Mr. Ulbricht said they could provide some.

Councilor Taylor asked if the batten board and shakes are stained and finished or just aging gray. Mr. Ulbricht was thinking of a natural light brown colored paint to get a longer life out of them.

Councilor Ragnell asked about the color discussions in the meeting on November 1st. Councilor Matthews mentioned that there was discussion about variations in the wood tones between the shakes and batten board siding that would make a nice contrast.

Councilor Ragnell asked about the loading door on the west side that is supposed to just be for pedestrians. Mr. Ulbricht said there is no vehicle traffic back there. Councilor Matthews would prefer it to be a person door so an employee doesn't accidentally drive equipment through it in the future.

Councilor Ragnell mentioned that it is difficult to tell the dimensions of the courtyard. Previous documents had mentioned 10' x 30' and she was wondering if this is still the size. She was concerned that it is not much bigger than 2 parking spaces and it seems like it is too small. Ms. Bricker asked if she was just talking about the area under the overhang. Councilor Ragnell wondered the size of the entire thing, including the part that sticks out past the overhang. She wondered if the decorative pavers could be extended out into the grassy area to make the courtyard/plaza larger. Councilor Matthews mentioned she has a sketch of a larger courtyard/plaza that she can provide to the applicant that includes a small, raised border with shrubs in it. An 18" planter with short plants in it along the border would work. Ms. Bricker stated that the interpretation of a previous Council was that trees were required. Councilor Matthews stated that trees are fine, but we don't want trees that are so tall that they block views. She stated that the applicant would need a landscape architect that can tell them what trees will do well here and will stay under a certain height.

Councilor Ragnell asked if there would be enough parking for all the employees at the proposed project. Ms. Bricker mentioned that they have adequate parking based on the parking ordinance. Pax confirmed that parking spaces must be in groups of no more than eight, which appears to be the case in the provided site plans.

Councilor Taylor said that where the sidewalk snakes around the south side would be difficult for someone on crutches to navigate, but that problem would be eliminated with the addition of the extra pavers suggested previously.

Councilor Matthews mentioned that the roll up door measurements have a typo that needs to be corrected. Councilor Ragnell mentioned that there are several spaces where the measurements seem incorrect, like on the bottom of the south elevation on DR.02 where two measurements are given for the same space. The site plan has arrows that don't seem to point to the appropriate places. Ms. Bricker mentioned that because of the architect's schedule they were unable to get all the corrections done that they would have liked. She said they can clean up the plans if the Council desires.

Councilor Ragnell questioned the reason for the black boxes on the plans. Ms. Bricker mentioned that these were irrelevant text boxes that were blacked out on purpose.

Councilor Taylor stated that we want it to be crystal clear as to what we are agreeing on and will need accurate plans.

Mayor Kemp then asked for testimony by proponents.

Mike Anderson stated that he supports this project after having reviewed the changes. He said he had a "housekeeping" item to bring up to council. Back in August of 2019 when the proposal was

for a commercial building and 28 room hotel there was a question as to whether street parking could be counted towards the project. It can if it is a private street, but it can't if it is a public street. The question at the time was whether Marine Drive is a private road or a public street. According to Mr. Anderson, the City Council at the time said, "we don't need another street to take care of, lets let it be a private street and they maintain it." When this outright permitted fish processing plant took the place of the first project, the Planning Commission at that time kept Marine Drive as a private road because that was the direction they received from City Council. Mr. Anderson stated that he didn't think that this issue had ever been carried through where it is documented with the current City Council. He thinks the status of Marine Drive is something that has to be included with this project, so we know if it will remain a private street or become a City street.

Councilor Matthews asked if this was ever voted on or written into ordinance. Mr. Anderson stated that the last City Council voted on it and kept it a private street. This would have been some time in the summer of 2019. Mr. Anderson doesn't know the exact process that was used to make it happen.

Councilor Stacks said she had recollection of a discussion about Marine Drive but couldn't remember a vote on specifically that matter. Councilor Porter mentioned that Rick Dart thinks Marine Drive is a private road. Councilor Matthews stated that it appears to be partially on private property, but partially in the railroad right of way.

Mr. Anderson said they only made a determination on the part of Marine Drive in the new project, and it is surveyed and entirely on the applicant's property. Councilor Matthews said that would need to be defined on a plot map with dimensions. Mr. Anderson said that it was four years ago. It has never been a question that it is on the applicant's property for this project. Mr. Anderson stated that he is not arguing this fact one way or the other, just trying to bring the information forward.

Ms. Leverette mentioned that she hopes in this discussion tonight the LUBA Remand criteria were indeed reviewed as she got lost in the discussion. She did state her support for the project, but mentioned that her preference would be for a hotel and cottages, but that for the financial success of Wheeler "we need more business."

Cynthia Simmons would like to applaud everyone for getting along this evening and said she supports the project because town needs more jobs and revenue. She'd rather see the cottages, but Mr. Ulbricht has waited 5 years so she hopes Council can finally make a decision.

Mayor Kemp then asked for testimony by opponents.

Sandy Douma stated that she is just plain confused. She wanted to confirm that Mr. Ulbricht hopes the City will approve the fish processing plant, but in doing so he will change the project he is going to do into a motel and cottages. Mayor Kemp stated that we are only addressing the fish processing plant tonight. Ms. Douma said she thinks the drawings of the fish processing plant look more like a hotel. She has spoken many times about the concerns she has with that particular type of business. There is no need for a fish processing plant as no commercial boats come up the Nehalem River and there are no docks for them to process their wares. Trucking everything in and out is not economical. Ms. Douma stated, "I don't know what in the world is going on here but that is how I feel."

Mr. Anderson commented that the fish processing plant "is an outright permitted use, not a

conditional use, so that last statement really has nothing to do with design review.”

Carl Whiting mentioned that Councilors are being asked to assess a particular project as if it was to go forward. He referenced Goal 17 Coastal Shorelands, which involves protecting the natural beauty and environment surrounding the community. Water Related Industrial and Water Related Commercial uses operating in the same building creates an issue where it becomes hard to ensure that processes only allowed on one side stay on the appropriate side. The outright permitted uses were created at a time when there were fish being commercially harvested here. Mr. Whiting questioned “if this project, as described, trucking in fish and trucking out fish and not using the bay, meets the standard, I’m confused, and if it doesn’t meet the standard, is it Water Related Industrial?” He also questioned if there would there be a public loss of quality of goods if the building was not located against the water. This project may be outright permitted but Mr. Whiting doesn’t think it meets the standard as applied. He stated that he’d like to see something that fits with our laws and requirements go down there, but there is too much gray area in this particular project.

Ms. Simmons mentioned that people in Wheeler who haven’t been coming to meetings the last four or five years have no idea why things keep “flip-flopping.” Perhaps there should be something at the Post Office or a little pamphlet put out so more people know what is going on in their own town and so there isn’t confusion like that.

Mayor Kemp mentioned that we received written commentary in opposition to the project from Mark Nelson, ORCA, and Ruby Wargnier. Councilor Matthews asked if the testimony needed to be read out loud. Ms. Richter stated that it did not need to be read out loud since printed copies were provided to the Councilors. Ms. Richter asked if there were any more public comments in the room or on Zoom. Mayor Kemp confirmed there were not any more public comments. Ms. Richter stated that it would appropriate to allow the applicant to make a rebuttal. The Council may then recommend a continuation so there is more update the materials, or make a tentative decision and instruct staff to draft conditions reflecting the items talked about today.

Mayor Kemp then asked if the applicant wanted to make a rebuttal.

Ms. Bricker mentioned that we are not here to discuss whether the uses permitted outright are allowed as that has already been decided. If the code needs to be updated it can be updated, but it hasn’t been.

Mayor Kemp asked if Council has sufficiently provided information to the applicant regarding the LUBA Remand issues. Ms. Bricker stated that between the written material, the meeting we had, and the staff report “we have been pretty focused on the things we should be focused on, from my perspective.”

Ms. Richter asked Ms. Bricker if a continuation date of December 19th would be enough time to revise the drawing consistent with what has been heard today. Ms. Bricker said it would be unlikely because of the holidays. Ms. Richter isn’t comfortable recommending the Council wait until the January Regular meeting as it is too close to the 120-day deadline. Ms. Bricker confirmed with Council that they’d like to continue the hearing rather than do conditions of approval. Councilor Matthews confirmed that this was correct. Ms. Richter said it would be easier from the City’s perspective to get revised drawings. Ms. Bricker asked if we could extend the 120-day limit, but Ms. Richter didn’t think statutes authorize the extension of that deadline on a remand. Her recommendation is to continue the hearing to date certain December 19th, and if no updated materials are provided in advance of that meeting, we may need to have a special meeting

in early January. Ms. Richter stated we would need a certain date in early January for when the revised drawings would be submitted, or the attorneys will have to partner to figure out how to extend the 120-day timeline. Ms. Bricker thought she could have an answer by Friday as to when they can have revised drawings available.

Councilor Matthews mentioned she will be gone January 2nd – 12th.

Ms. Bricker confirmed with Ms. Richter that email communication is still acceptable. Mayor Kemp confirmed with Ms. Bricker that if she couldn't have drawings ready by the 19th, that she would provide a hard date for when they can have the drawings ready so they could be addressed in a special session in early January. Ms. Bricker replied "yes, we can do that."

Ms. Richter mentioned that if drawing weren't ready by December 19th, the City can call the matter to public hearing and then make a motion to continue it on whatever day we decided on and it would not be necessary to take public testimony at that time. On the Agenda for the December 19th meeting the city could even state that the applicant has requested a further continuance to whatever date we decide on.

Councilor Taylor made a motion to continue the hearing to date certain December 19th at 6pm with the record remaining open so additional testimony can be submitted. Councilor Stacks seconded the motion. The motion was passed 5-0 (Yes: Matthews, Ragnell, Taylor, Stacks, Porter; No: none).

Public comment on non-agenda items

Ms. Leverette said she would like an update on the status of obtaining speed signs for Wheeler. There has been talk in previous Council meetings over the last couple years about digital speed signs being available as an effort to slow down traffic in town and improve public safety.

Old Business

- a. Nuisance Updates – Councilor Stacks stated that 63 Nehalem Blvd was notified that the building needs some upkeep and beautification. The building at 67 Rector was also notified about the condition of their building and we had not yet received communication from them. The house at 344 Hemlock is abandoned and the owner is at the Care Center. Council will need to discuss how to abate the nuisance of this unsecured building with a rodent problem. Councilor Ragnell asked how bad the property condition was. Pax confirmed that the door was ajar, the house is full of trash, and the yard is overgrown. Councilor Matthews asked Pax to follow up on the cost of abatement. Councilor Stacks mentioned that the property next to the Bell's had overgrown grass that has been an issue. This property is owned by a realtor, and the City can reach out to them to try and have this addressed before the next dry season. Councilor Matthews asked about 675 Nehalem and the brown tarps. Councilor Stacks mentioned that the property owner can't afford to take care of this by the end of the year. Mayor Kemp stated that there has been dialogue all along, and he had told the property owner that the City would be understanding through the fall of 2023 in light of the bad weather. The City will continue to request that he fix the siding which he has committed to do. Councilor Stacks provided the property owner with some grant opportunities that he may be able to apply for to help him fund the repairs. Councilor Matthews asked if we have anything in writing from the property owner and said we should send a formal letter and get an agreement because it has been over 2 years with no progress.

- b. Ordinance 2023-03 (Customer Water Leaks) – This ordinance was read in full. It has been modified from the original version by switching “reasonable time” to “14 days,” and had been re-worded so as not to make it a requirement for the city to notify the customer of water leaks as the city is not always aware of them.

Councilor Porter **made a motion to adopt Ordinance 2023-03**. Councilor Ragnell **seconded the motion. The motion was passed 5-0** (Yes: Matthews, Ragnell, Taylor, Stacks, Porter; No: none).

- c. Resolution 2023-10 (Drain Field in Upper Park) - The resolution was read in full.

Councilor Porter asked why a new drain field or easement would be required if Upper Park were ever to be sold. Councilor Matthews stated that she didn’t agree with that part either.

Mr. Anderson said that City is accepting this donation, and is obligated to establish a similar situation somewhere else if they get rid of it, and that is not uncommon. He thinks this language is fine. Councilor Stacks mentioned that the wording may have been to cover Nehalem Bay Wastewater and how they got their grant. Mr. Anderson said it is kind of a “cover your ass” type thing and it is standard.

Councilor Taylor wanted clarification. Councilor Stacks stated that if the property was sold the city would have to make accommodations that would be similar to the drain field at Upper Park. Mr. Anderson stated that an alternative would be if a part of the park was sectioned out of the deal so the city would still own access to the drain field. Councilor Matthews stated that ideally there would be a building with a flush toilet hooked up to this system. The grant the WET Team is working on with the EVCNB for a new building by upper park wouldn’t work with this drain field.

Ms. Leverette mentioned that this has been a topic of discussion many times. At one point there was a discussion about the Upper Park being donated in perpetuity to the City of Wheeler, making its sale or transfer highly unlikely. Former City Manager Mary was going to do research into that.

Mayor Kemp stated it is not in the title and confirmed that it was not in perpetuity.

Councilor Stacks said she didn’t really care about the last sentence of the resolution, but mentioned that her concern is that the person behind this grant is retiring at the end of the year and we don’t want to lose any more time.

Pax reread the sentence to be removed from the resolution. He then reread that entire amended paragraph of the resolution.

Councilor Stacks **made a motion to adopt Resolution 2023-11 as amended**. Councilor Ragnell **seconded the motion. The motion was passed 5-0** (Yes: Matthews, Ragnell, Taylor, Stacks, Porter; No: none).

- d. Assign Committee Members for Waterfront Development Committee – The Council approved formation of the committee back in July. The proposal was to have 5 committee members, but it was increased to 7 after receiving input from the public. There had been a total of 12 applicants. The idea was to get started right away but the

city was entering into mediation which has been taking longer than expected. The applicants were Beverly Jett, Katie Brown, Marc Johnson, Karen Matthews, Doni Mitchell, Theresa O'Quinn, Deanne Ragnell, Edith Rohde, Anna St. John, Margaret Thomas, Kenneth Ulbricht, and Carl Whiting. The proposed committee members are Katie Brown (Business/Citizen), Marc Johnson (Business), Karen Matthews (City Council/Citizen), Theresa O'Quinn (Business), Deanne Ragnell (City Council/Citizen), and Anna St. John (Planning Commission).

Mayor Kemp asked what the plan was for tie-breakers with an even number of members. Councilor Matthews confirmed that a 3-3 vote would indicate a "no." She clarified that the committee would be documenting and creating drawings and photo evidence of existing rules and regulations.

Councilor Taylor **made a motion to accept the Wheeler Waterfront Citizens Advisory Committee** Councilor Stacks **seconded the motion. The motion was passed 5-0** (Yes: Matthews, Ragnell, Taylor, Stacks, Porter; No: none).

New Business

- a. Ordinance 2023-06 (Tenant User Fees) – The ordinance was read in full.

Councilor Ragnell asked where the idea for this ordinance originated. Pax replied that City Hall had received a phone call from Peggy Schuman who was upset about the current ordinance requiring water billing to be in the property owner's name, as she wanted the water billing to be put in her tenants' names. Pax confirmed the ultimate responsibility for payment would remain with the property owner under this proposed ordinance.

Councilor Matthews questioned if all properties are on individual meters. Pax confirmed that there are properties where multiple dwellings are served and billed through a single water meter. Councilor Matthews stated that situations like that would cause a problem.

Councilor Ragnell stated that she didn't believe this was necessary and that it would lead to confusion as tenants come and go all the time. She fears that it will lead to a huge amount of extra work for City Staff.

Councilor Stacks said she has been renting her house for eleven years and yet her water bill is in her name. Pax reiterated that the current ordinance states it must be in the property owner's name, but that not all accounts may be accurate in that regard.

Mayor Kemp stated that Oregon Tenant Land Law regulations allow the landlord to put the water in the tenant's name. It has to be approved by the utility provider, but the owner is not absolved from the responsibility of paying the bill. The owner would not be able to have the water turned back on for the next tenant if the bill remains unpaid from a prior tenant.

Councilor Ragnell stated that she isn't prepared to make this change based on one phone call.

Ms. Douma said she has had a rental here in Wheeler. She has experienced over time that if you don't have a tenant responsible for their water bill and instead the landlord

has to pay it, the tenants don't care how much water they use. "They can run up the bill and it's no problem because they don't have to pay it." This ordinance would help with conserving the water.

Ms. Simmons owned an apartment complex in Lincoln City for 20 years and the water was factored into the tenants' rent. "People who live on the coast, they lose their job, they are transient, they leave their water running, they take one-hour showers. They really do, and the water bill was outrageous." If the tenants had a leak, they wouldn't report it because they didn't want their rent to go up because of the cost of repair. Ms. Simmons stated that Ms. Schumann had come before council previously stating she would have to raise her tenant rates because of the water rate increases.

Councilor Taylor lived in an apartment where the water was shut off because the landlord failed to pay the bill. He likes the thought of a tenant not having to pay the landlord, instead they have the option of paying it directly to the utility provider. Pax mentioned that people had called City Hall in tears because they had been paying rent to their landlord, but their landlord hadn't paid the water bill and water shut-off notices were distributed to the tenants at the property. (Payment was subsequently received and the water shut-off was avoided.)

Council asked for a re-write of this ordinance indicating that tenants would have to be on separate meters (installed at the expense of the property owner), otherwise the water bill would remain in the property owner's name.

b. Planning Commissioner Application – Brad Donohue

Councilors Ragnell and Matthews indicated that Mr. Donohue would be a good addition to the commission. Councilor Stacks had a concern about how many part-time residents can be on the Planning Commission. Pax confirmed we are allowed to have two, and Mr. Donohue would be the second one (as he is only here part-time, like current Commissioner Anna St. John).

Ms. Leverette mentioned that this past summer Mr. Donohue had dug a large pond (20 feet long) on his property near a slope. She would like to know that the pond was permitted so the house above it is not at risk. Councilor Matthews asked what this has to do with him being on the Planning Commission. Ms. Leverette wanted to verify if permits were taken out and rules were followed. Mayor Kemp asked if Mr. Donohue was the gentleman that had poultry. Ms. Leverette confirmed that he does. Councilor Porter stated that as long as the pond has a liner there won't be water soaking into the ground.

Councilor Taylor said we should look into whether or not this pond was permitted.

Councilor Stacks **made a motion to accept Brad Donohue's Application for Planning Commissioner.** Councilor Ragnell **seconded the motion. The motion was passed 5-0** (Yes: Matthews, Ragnell, Taylor, Stacks, Porter; No: none).

Committee Reports

- a. Waterfront Development Citizens Advisory Committee – discussed above.
- b. Parks & Recreation – They last met on November 17th. They have changed work

sessions to Friday afternoons next year in the hopes of getting more participation. They have pruning planned for late January into February, weather permitting. It will take years to get some of the trees back in shape in Upper Park. They have applied for a small grant for native plants and education to go with the restroom rebuild. The Park Committee has been decorating the train depot and finished today. Santa is coming to town at the Old Wheeler Hotel on Sunday December 10th from 2pm-4pm. Mrs. Clause will be there too! At 4:30pm the city will have a tree lighting at the train depot with cookies and hot drinks. Santa and Mrs. Clause will come over at some point and as it gets dark out the lights will be clicked on.

- c. Port of Nehalem – Mayor Kemp announced at the last meeting that our log booms are up and seem to be working. Councilor Matthews had an observation to report. She said the booms are working really well as the tide goes out, but as it comes in an eddy by the park fills up with debris. She said we may need to watch by the kayak launcher, especially during king tides. Mayor Kemp confirmed he’s been checking it daily. The city does have a log extension that can be put on there if desired to stiffen the joint so it doesn’t bend at all. The only concern with doing that is that Jim Neilson wanted the ability to disconnect the log to bring rental boats in and out. Councilor Matthews mentioned that she is talking about the other side, near Wheeler on the Bay Lodge. The City will need to keep an eye on the debris that accumulates in the eddy there during the incoming tide.
- d. WET – Ms. Leverette has been working on readiness books. They want to do a mass mailing to all the residents’ Post Office boxes in town to give them information on how to best be safe. They have partnered with EVCNB who donated the books and part of the postage, and the WET team has the funds to cover the rest. These will be mailed out after December 19th, so Councilor Stacks asked that the other Councilors please indicate if there is anything that should be added or changed. Councilor Matthews mentioned that the Post Office is closed due to flooding so it may be wise to wait until after that for the mailing. Ms. Leverette mentioned the fire safety info in the packet came from the Fire Department. The WET Team is also working on the tenting and planning strategy for evacuation at the nursing home. Paul Knight has resigned and will be moving away. He will be presented with a certificate of appreciation at the next council meeting.
- e. Planning Commission – The Planning Commission Report was read. *A copy is available in the Agenda Packet.*

Mayor and Councilor Comments

Councilor Matthews noted that the Planning Commission meets tomorrow and the NBHD will be presenting their plan for the new clinic on Highway 101. Santa is coming on Sunday!

Adjournment

Mayor Kemp called the meeting to close at 9:27 PM.

Dated: December 6, 2023

Clif Kemp, Mayor

Pax Broder, City Manager/Recorder

Recorder: Pax Broder