

CITY OF WHEELER

CITY COUNCIL – DECEMBER MEETING MINUTES

December 19th, 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 Ulbricht, Mike Anderson, Edith Rohde, Garry Gitzen, Paul
Knight, Betsy Chase, Mary Leverette

Present via Zoom:

Guests: Carrie Richter, Laura Moulton, Juliet Hyams

Consent Calendar

Councilor Stacks **made a motion to approve the Minutes from 11-30-23, the Minutes from 12-6-23, and the November Financial Report.** Councilor Ragnell **seconded the motion.** **The motion was passed 5-0** (Yes: Matthews, Ragnell, Taylor, Stacks, Porter; No: none).

Mayor Kemp changed the order of the Agenda items.

Public Hearing - *LUBA No. 2022-002 Remand – Fish Processing Plant*

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 in this matter?” *There were none declared.*

Mayor Kemp asked, “Has any Councilor had any ex parte contacts or made a site visit?” Mayor Kemp mentioned that all councilors have visited the site. *There was general agreement on this point.* Councilor Matthews mentioned that, as stated previously, she met with the applicant’s

attorney at the November 1st meeting.

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, City staff met with BMLLC Attorney Jennie Bricker at Wheeler City Hall to discuss design review criteria related to the LUBA Remand.

On December 6th, 2023, the City Council held a Public Hearing for LUBA Remand No. 2022-002, and the Council voted to continue the Public Hearing to date certain December 19th, 2023, after requesting updated application materials from the applicant.

The applicant submitted updated application materials to us electronically on December 13th, 2023.

The following items had been addressed in the updated documents:

- 1.) The east elevation on DR.02 now matches the Perspective Sketch shown on DR.04.
- 2.) The obsolete blacked-out rectangles have been removed from the new version of the plans.
- 3.) The loading doors on the north elevation are no longer labelled as a secondary entrance.
- 4.) The roll-up door that was originally indicated on the west elevation has been replaced by a standard man door.
- 5.) The canopy over the door on the east elevation has been removed but these remain in place on the plans for the west and north elevations.
- 6.) The “courtyard” area has been made larger by extending the decorative paved area per the Council’s request. A border has been added to the south and west sides that contains a low wall and short shrubs that are not to exceed 2’ in natural height (though exact plant species were not mentioned). The trees shown on Perspective Sketch DR.04 around the courtyard area are also not specifically identified but are indicated on the plans to be a species that will naturally remain shorter than 24’ in total height.

To recap the LUBA Remand issues:

- 1.) Courtyard/Plaza – LUBA stated that the City’s findings were inadequate to explain why the covered area at the entrance fails to qualify as a “courtyard/plaza.”
The Council wished to see this area enlarged. The applicant has expanded the decorative pavers to cover a larger area and has added a short shrub border on the south and west sides. There are also benches in the area and trees that are not to exceed 24’ in total height.
- 2.) Direct Pedestrian Connection – LUBA stated that the City did not explain why the sidewalks provided were insufficient to provide a direct pedestrian connection to the building.
The Council felt it was a safety concern to have pedestrian walkways cross the paths of commercial delivery trucks. The applicant has relocated commercial vehicle and truck traffic to the north side of the building so these vehicles no longer cross the customer parking lot.
- 3.) Compatible use with surrounding structures. – LUBA stated that the City’s findings were inadequate to explain why the materials to be used in construction weren’t compatible with the natural elements and applicable city ordinances.

The applicant’s Supplemental Narrative shows how the height and scale of the

proposed buildings will be compatible with nearby buildings in the area and includes photos of those buildings for reference. It identifies the natural elements of the site as the river, grassy marsh areas, and tree-covered hills. It also indicates that the slate gray and black of the roofing material, natural wood color of the shake and board-and-batten siding, black trim on windows and doors, and green canopies are more compatible with the texture and color of the natural elements.

- 4.) Style Characteristic of Wheeler and the Coastal Area – LUBA stated that given the permissive language in the ordinance (WZO 11.050(4)(b)(2) - Architectural Style of Development) this cannot be relied on as a basis to deny the application.

The applicant's Supplemental Narrative includes historic and recent pictures of other buildings in Wheeler. The building design for the fish processing plant includes natural wood siding, pitched roofs, large overhangs, cedar fencing for outdoor screening, and a color palette of earth tones with forest green canopies.

- 5.) Monotony of Design – LUBA stated that the city's findings were inadequate to explain why the detail, form, and site design didn't satisfy this criterion.

The applicant has moved the industrial loading entrance to the north elevation. It has two distinct forms of wood siding with a large green canopy over the entrance. The rollup doors on this side have windows. There is also a break in the roofline on this elevation.

The west elevation has two distinct forms of wood siding, a canopy over the entrance, a bench, trees, and a variation in roof line at the northwest corner.

The east elevation has been redesigned to mirror the style of architecture on the south elevation, which the Council had previously determined satisfied the standard.

- 6.) Impact on View from Other Structures – LUBA stated that any development on this property would have an impact on views, and the city cannot, consistent with the United States Constitution, interpret this provision in a manner that results in a de facto view easement over the petitioner's property.

The applicant has created variations in the roof line in order to make the view more aesthetically appealing. The building's finishes are earth tones to match the natural features on the site. The building also consolidates a commercial and an industrial use, reducing the structures footprint and impact on the natural shoreline.

No additional written testimony has been received beyond what was presented at the last Public Hearing for this matter.”

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 if there was a presentation by the applicant.

Jennie Bricker, attorney for the applicant, wanted to remind the audience “where we have found ourselves here.” She stated that there is an alternative to this proposal that would rely on a longer-term development that would create a zone change and then the property could be developed with

a series of commercial and residential uses. The City's attorneys have a draft of this development agreement. The applicant is getting application materials together. If they can finalize the agreement, as part of it they would agree not to develop the fish processing plant. The alternative would require waiting for zone changes and various approvals. Tonight they are seeking approval of this outright permitted use to fall back on in case they are unable to negotiate the alternate development or are unable to get the zone change. They are hoping to have the alternative proposal before the City soon.

Ms. Bricker stated that based on the December 6th meeting, changes and corrections have been made to the drawings. She said she didn't have anything specific to add, but said she was ready to answer any questions or address any concerns the Council may have. She thanked Councilor Matthews for providing drawings of the courtyard.

Ken Ulbricht provided samples of the cedar shakes and the batten-board siding. He stated that both will be painted, which he believed would hold up better than stain in our weather.

Councilor Stacks thanked the applicant for getting updated drawings back to the City quickly.

Mayor Kemp then asked for testimony by proponents. *None were identified.*

Mayor Kemp then asked for testimony by opponents. *None were identified.*

Councilor Matthews thanked Mr. Ulbricht for the material samples and said that they were much better than the metal siding. She stated that the Contract Planner Staff Report from September 2021 had a variety of things to be considered and done as the applicant works through this process. She said the City didn't know how much water the fish processing plant would require, and she wanted to confirm that this would be addressed later in the permitting process. Mayor Kemp said he believed that it would. He said that a copy of the conditions from the September 2021 Staff Report had been provided to Mr. Ulbricht right before the meeting. He then asked Mr. Ulbricht if he understood these requirements. Mr. Ulbricht replied that these were pretty typical requirements, and that he understood them.

Councilor Ragnell stated that she is satisfied with the updated application materials.

Councilor Taylor recognized that this isn't what the applicant truly wants to build. His concern is that if the next proposal doesn't meet the City's regulations, the fish processing plant will be "held over our heads like a sword, in the sense of 'well if you don't bend the rules so we can build this project we are going to do the fish processing instead.'" Councilor Taylor wanted to state in the open that he hopes we don't find ourselves in that position, and that we deal with the next proposal straight forward as that proposal.

Councilor Matthews stated that it has taken a long time to be able to sit down and talk this way. The way the process is working now is the way she would have hoped it to work prior. She said that we have to follow the rules, "however how we work together will make a difference." She hopes we can do the same thing going forward with other plans.

Laura Moulton stated that she owns property in Wheeler and is looking forward to being a citizen of Wheeler in the future. She asked if it was possible to access geological surveys or other studies showing that this project is a safe, smart development. Pax mentioned that with a public records request City Hall would send whatever data they have available. Ms. Moulton wanted to confirm that the Council felt comfortable with the project from an environmental standpoint. Councilor

Matthews stated that this evening we are only looking at design review criteria remanded by LUBA. There are other aspects of the project that are still pending.

Ms. Bricker stated that we don't fully know what the new development agreement will look like. She said they don't think the City should bend the rules for them, but rather they want to follow the rules. Ms. Bricker said she appreciated Councilor Matthew's statement about collaboration. She thinks they will ultimately agree to not build the fish processing plant. In the development agreement, the approvals will proceed in an organized fashion that both parties agree to up front.

Councilor Taylor said he'd like to not feel like a ping pong ball between the applicant and ORCA.

Mr. Ulbricht said he's not going to look in the rear-view mirror going forward. He agrees with the collaborative approach and thinks both sides can win. He said that his heart is in trying to get this resolved.

Carrie Richter wanted to confirm that the Council's tentative approval would include the conditions that were circulated from the 2021 Staff Report.

Councilor Taylor made a motion to tentatively approve the Fish Processing Application with the conditions from the 2021 Staff Report and to direct staff to bring those findings to council on January 16th for adoption. Councilor Stacks seconded the motion. The motion was passed 5-0 (Yes: Matthews, Ragnell, Taylor, Stacks, Porter; No: none).

Ms. Richter mentioned that the record is now closed, and no new testimony will be taken at the meeting on January 16th, only a vote to approve the findings.

Edith Rohde wished to make a comment, but the record was closed.

Presentations, Guests, Announcements

Mayor Kemp presented Paul Knight with a certificate of recognition for his years of service to the City where he led the WET Team. Mayor Kemp said that Mr. Knight was so well equipped to guide that committee that Mayor Kemp thought he actually was a professional emergency worker. Mayor Kemp stated, "This guy is a Godsend to Wheeler; we are going to miss him. But, he has acted in such a professional manner that his service to this community will be felt in a positive manner for many years to come."

Mr. Knight said that he sincerely appreciates the kind words and all the help he got from the City to make emergency preparedness possible. He wanted to give a big shout out to Councilor Stacks who has worked in tandem with Mr. Knight on the WET Team. He hopes the legacy they have worked so hard to start will continue and grow into the future. He stated that the more City Council can be involved and present at programs, the better. He said that it can be hard to reach people in Wheeler, but Mary Leverette has been working hard to address this with the 'Welcome to Wheeler' packets. Mr. Knight said he won't be a stranger, he'll be back.

Public Comment on Non-Agenda Items

Edith Rohde said she comes from a public relations and communications background. She was hoping there could be something in the Mayor's letter that could explain what has happened in the public hearing tonight to help better inform the community. Mayor Kemp said it is difficult to understand the way this whole thing has played out, but said he would try to assemble a commentary for the public to help inform them.

Mike Anderson said it was stated that at least one mediation meeting has taken place, and asked who the neutral third-party mediator was. Councilor Matthews stated it was presided over by Judge Jean Maurer. Mr. Anderson thought this information should be included when the Mayor puts out a public commentary. Councilor Matthews said this mediation had been discussed in Council meetings in the past, but since not everyone attends the meetings, things will be clarified in a newsletter.

Mr. Anderson asked if a developmental agreement is reached between those mediating, would it go back to the Planning Commission for review? Mayor Kemp stated that the attorneys are handling the developmental agreement. There will be a timeframe built into it (likely a year) for the applicant to get their second proposal in to the City. Mr. Anderson asked how the public would get involved after the development agreement is made. Councilor Matthews said, "we will be following all of the standards and laws of land use planning in Oregon as we move forward." She said the City is in mediation which is a legally protected process, and "we really cannot say a whole lot more." She said the July and August meeting records will have some background discussion on the mediation process. Councilor Stacks mentioned that the Council will try to keep citizens updated as best they can. Councilor Matthews wished to remind everyone that "we still have a ways to go." Mayor Kemp confirmed that the mediation is not binding.

Garry Gitzen stated that the gateway sign on the south side of town is missing. He asked if anyone knew what happened. Councilor Matthews stated that there were tire tracks indicating that someone crashed into it and then drove away. Mr. Gitzen asked if law enforcement had been contacted. Pax confirmed that they had not. Mr. Gitzen said he was concerned that the Council has a cavalier attitude when it comes to protecting City property. He said he put a lot of work into that gateway sign. He asked if protecting the City's property was one of the Councilors' duties, and Mayor Kemp confirmed that it was. Mr. Gitzen said there was no broken glass at the scene, and he believes this indicates that there had not been a crash. Councilor Matthews said she picked up glass as it was a safety hazard, but that it could have been from the lights on the sign. Mr. Gitzen stated that a vehicle could not have driven away after crashing into that sign. He believes someone attached a chain to it and drove off.

Councilor Stacks said the sign disappeared between 9pm and 9am that night (December 6th-7th). She and her mother have planted the flowers in the planter box on that sign for the last 8 years, and Councilor Matthews did it prior to that. Pax confirmed that he will file a police report in the morning. Councilor Ragnell asked if the pieces of the sign were on the ground, and Councilor Matthews confirmed that they were. Mr. Gitzen said he knows the City has already approved a new sign to "make it look like we are just part of Tillamook." Councilor Ragnell confirmed the image was approved but now the structure may need to be changed and that will be discussed later tonight.

Councilor Stacks said she took the "Wheeler" part of the sign and had offered it to Mr. Gitzen immediately before the meeting this evening. Mr. Gitzen then left the meeting.

Councilor Ragnell asked if it was possible for the damage to the sign to have been deliberate. Councilor Stacks felt strongly that it was a matter of reckless driving.

Mayor Kemp then asked if there were any nuisance updates. Councilor Stacks said that the house on Rector has been cleaning up their property a bit. Pax stated he had Orkin Exterminators do a site visit at 344 Hemlock. They had felt that the house had too much trash and overgrowth for rodent mitigation to be successful, but later called back saying they had some ideas. Pax is waiting for a proposal to be emailed to him. There is a chance that there may be a bank foreclosure on that

property happening now as well. Councilor Matthews asked if the City had made the proper notifications that would allow them to recover the costs of rodent control. Pax said that determining where the funds would come from at first would be necessary, but that ultimately a bill would be sent to the property owner and if not paid within 30 days could become a lien against the property.

Councilor Stacks mentioned that complaints about Christmas lights being left on late shows we have a poor tolerance level. She would like the community to have a bit more communication between neighbors and more tolerance of each other. She stated that she would like to work on that part of nuisances first thing next year. She said she intended to follow up with Mr. Mott this week.

Councilor Ragnell said that Linda at Handy Creek Bakery got a copy of the letter that had been sent to the property owners about the condition of the building's siding and she felt that they were being singled out. Councilor Stacks suggested that going forward the City should have a face to face with property owners before a letter goes out. Councilor Matthews said that there should be public awareness that the City is trying to make town a more welcoming and pleasing place and perhaps this should be indicated in a newsletter as well.

City Manager and Public Works Department Report

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

Pax asked if the Council would approve the City pursuing engineering for a stick-built restroom for Waterfront Park rather than the prefabricated restroom that was originally planned. *There was general agreement from the Council to take the stick-built approach.*

The Public Works report was read. *A copy is available in the Agenda Packet.*

Councilor Matthews asked what is being done to mitigate the area where the landslide was that plugged the Gervais Creek inlet. Pax confirmed that tarps are down to direct the water down to the creek for now, and Jiffy Construction has been contacted to replace the bad culvert.

Old Business

- a. Nuisance Updates – discussed above.
- b. Ordinance 2023-06 (Tenant User Fees) – This ordinance was read in full.

Councilor Matthews **made a motion to adopt Ordinance 2023-06 with corrections to typos.** Councilor Taylor **seconded the motion.** **The motion was passed 5-0** (Yes: Matthews, Ragnell, Taylor, Stacks, Porter; No: none).

New Business

- a. WET Team “Welcome to Wheeler” Packet Approval – Councilor Stacks passed these out at the last meeting so Council could review them. At the last WET meeting they decided to delay mailing due to the flooded Post Office. The Councilors said they had no concerns with the packet.
- b. Employee Handbook – Holiday Updates – Pax stated that over the span of 2023 the two Mayors had each closed City Hall in observance of holidays that were not specifically listed in the employee handbook. Those days were Juneteenth, Indigenous Peoples’ Day, and the Friday after Thanksgiving. Pax asked that the Council take a vote on formally adding these as recognized holidays to the Wheeler Employee Handbook.

Councilor Matthews asked which holidays the City currently had in the Employee Handbook, and Pax was uncertain. She wanted to compare how many holidays the City recognizes to how many the County and the other cities recognize. Pax said he'd bring that information to the next Council meeting.

- c. Financial Audit Action Plan – Pax explained that this is something we are required to file with the state after the Council approves it. Councilor Ragnell expressed concern that in the audit findings the City had paid late fees on credit card bills. Pax confirmed that these were from earlier in the year when there was turnover in the staff, but that lately everything has been getting paid on time with the systems currently in place. Councilor Stacks said she is hopeful that the continuity of staff will help reduce issues like this in the future. Councilor Matthews pointed out that last year the City had fourteen violations, and this year only six.

Councilor Stacks **made a motion to approve the financial audit action plan as amended for grammatical errors.** Councilor Ragnell **seconded the motion.** **The motion was passed 5-0** (Yes: Matthews, Ragnell, Taylor, Stacks, Porter; No: none).

- d. Budget Amendment Resolution – Parks Fund – The resolution was read in full.

Councilor Stacks said this looks a little scary, but after talking to Madi she was told that contingency funds are for unforeseeable events like this. She was concerned about the debris under the dock that needs to be dredged away.

Mayor Kemp stated that he doesn't think the City is ready to proceed with this right now. He thinks we need more time to talk about it and first need to determine how the debris will be removed from under the dock. Pax stated that Sopko Welding's quotes are good for ten days, and that the grant from the Oregon Marine Board needs to be closed out by the end of the year (though they seemed receptive to the idea of granting the City an extension on time). Pax also stated that the docks are listed on the property schedule with the City's insurance carrier (CIS), but the gangway isn't specifically listed. CIS had helped find contractors to provide quotes for the gangway repair earlier in the year, and Sopko Welding was the most affordable option at the time. Mayor Kemp asked if CIS was "a player" in the gangway now. Pax said that they were not involved at this point. Mayor Kemp requested that Pax, Phil, and he have a meeting in the morning to further discuss the gangway and the dredging and welcomed interested Councilors to join. Councilor Porter felt that the quotes wouldn't continue to rise much in the near future if the City needed more time to make a decision.

Committee Reports

- a. Waterfront Development Citizens Advisory Committee – Councilor Matthews said they are still putting the packets together, but they will go out this week. The meetings will start in January.
- b. Parks & Recreation – Councilor Matthews said that this afternoon the City was awarded \$2,000.00 from the Nehalem Bay Garden Club for the reconditioning plantings around the movement of the restroom. The intent is to have more drought-tolerant and native plants, and some educational signage. Councilor Matthews thanked Councilor Taylor for taping off the park with caution tape after the storm erosion, but noted that it has been ignored by some people. She requested signage indicating the park is closed, Pax

said the City will get right on it.

- c. WET – Councilor Stacks wanted to give a huge kudos to the Council and the Staff for how the City responded to the flood emergency. She said we were way better prepared than last time this happened back in 2016. Going forward we should make sure that all Councilors are contacted right away during an emergency. Councilor Ragnell asked if we knew how long the Post Office would be closed. Councilor Matthews heard from Casey (the new postman) that it would be 2-3 weeks. She stated that there is still a need for help from our businesses and citizens for additional cleanup. It is more of a civic thing than a city responsibility, but there will be a call going out for help loading a dumpster for the Old Wheeler Hotel, likely in a week or so. Councilor Stacks said the Nehalem Bay Volunteer Fire Association has two fundraisers a year for scholarships for EMS. She said one of them is a Christmas tree removal program where they come pick up your tree between the 1st and 6th of January and then have a giant bonfire on the beach to burn them. She asked that Pax have it added to the City’s website. There is a suggested donation of \$10.00 if you have your tree removed. Councilor Ragnell mentioned this should also be posted on North Coast BBQ.
- d. Planning Commission – The Planning Commission Report was read. *A copy is available in the Agenda Packet.*

Councilor Ragnell mentioned that the plans being projected onto the projector screens were very helpful. Councilor Matthews applauded how the NBHD had all their documents in order up front. Councilor Stacks asked how Mayor Kemp felt about City Councilors attending the Planning Commission meetings. Mr. Anderson stated that “if you are involved you can’t comment or say anything,” so it is better that Council does not attend the meetings because they are the appeal from the Planning Commission. He said it was fine for the Planning Commission to relay to the Council what they are doing and for Council to ask questions of them, but it’s best if the Council is a neutral party if an appeal comes to them. Councilor Matthews stated that we should follow the guidance from our attorneys on this point.

Councilor Ragnell stated that the new gateway signs have been going through the process for the last 6 months. The original design was going to be too close to the road, so another design has been sent for the structure that supports the sign. Councilor Ragnell recommended that we add some stones to the base. Councilor Matthews stated that Nehalem’s sign is closer to the road than Wheeler’s would be, and that the rock base could maybe be used at least on the south end of town. Councilor Porter stated that the new sign for Bay City looks nice. He said that sooner or later the rocks would need to be repaired. Councilor Stacks said that the citizens got to pick the design for the sign, and that’s probably more important than what the base looks like. Mayor Kemp asked if the signs would be in the same location as the old ones. Councilor Ragnell mentioned that there was supposed to be ODOT approval for the removal of the old signs. Mayor Kemp stated that the Bay City sign is located under one of ODOT’s mercury lights, so it is lit all the time courtesy of ODOT. He wondered if something similar could be set up for the location of the sign in Wheeler.

Mayor and Councilor Comments

Mayor Kemp gave his thanks to Council for all the hard work over the past couple of meetings.

Adjournment

Mayor Kemp called the meeting to close at 8:10 PM.

Dated: December 19, 2023

Clif Kemp, Mayor

Pax Broder, City Manager/Recorder

Recorder: Pax Broder