

# CITY OF PILOT ROCK

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## Council Meeting

June 21, 2016

7:00 PM

### A. Called to Order

Having a quorum, the Regular Council meeting was called to order by Mayor Carnes at 7:00 PM. Council members present were Deacon Perkins, Bob Deno, Ray Corwin, Terry Womack and Jim Hinkle. Also present were Teri Porter, Steve Draper and Bill Caldera. Citizens present were Mary Lue Slabik, Jackie Carey, Brad Baird and Jadon Herron,

### B. INVOCATION

Councilor Deno gave the invocation

### C. PLEDGE OF ALLEGIANCE

### D. APPEARANCE OF INTERESTED CITIZENS

### E. PRESENTATIONS

None

### F. ACTION ITEMS

#### F-1 Off Street Parking Variance at 110 N Alder

John Fenton was present to discuss the off street parking concerns for his property at 110 N. Alder (Doc. Kochs old office). It was explained that on February 13, 2014, Council had granted a 1-year variance for the required off street parking. On February 3, 2015, Council granted a 6-month extension to the variance. The extended variance would have ended on October 2015. The City purchased the property at the foot of the stair, just north of Fenton's property. The City will be tearing down the existing house (pending the elimination of asbestos), then use the lot as an access to demolish the old stairs and replace with the new stairs. Once the stairs project is complete it has been discussed that the lot will be leveled and graveled and at that time Mr. Fenton can negotiate with the City to purchase or lease the lot to remedy his off street parking issue. Councilor Deno asked what is the estimated time for completing the stairs? Brad Baird of Anderson Perry (engineers working on the project), stated that it could be done next fall.

*Steve Draper walked in at this time.*

Councilor Hinkle asked Mr. Fenton what he has in mind when the property is available as a parking lot? Teri Porter added by asking are you open to leasing, renting or purchasing the property? Mr. Fenton said yes he is open to any scenario, he does not want to abandon his project, he is open to making it work. Councilor Womack asked about all the other off street parking along Main St. Teri explained that Council had granted a variance to Pilot Rock Housing Development when they were planning Birch Creek Manor allowing a certain number of parking spaces for their residents. John sited several duplexes, fourplexes and business that do not have off street parking and expanded on his knowledge of the State laws stating that once you open up a building permit, or change of use, the State can now impose these restrictions, which make it more and more difficult for developers. If it is more difficult to get things done in one town than another they are likely to do business in the town that makes it easy to get the job done. Teri stated that she understood his concerns but since this property does have a remedy and given the location of the property (right at the end of Main St.), it is her hope that Mr. Fenton is willing to resolve the off street parking with the lot that will be available once the stairs are complete. Mr. Fenton agreed. Steve Draper added that the fourplex has been given some off street parking in the lot behind the building. Steve also stated that

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he is waiting for a report from the asbestos abatement. **On a motion by Councilor Deno and seconded by Councilor Womack, Council agreed to extend the off street parking variance until the completion of the parking lot and make a deal with Mr. Fenton at that time. All present voted yes.**

## **F-2 Variance Request for property at 142 NE Douglas.**

Council considered the Planning Commission's recommendation to approve the variance request. **On a motion by Councilor Womack and seconded by Councilor Hinkle, Council approved the 4' set back variance to the eaves. All present voted yes.**

## **F-3 Adopt the Revised Wastewater Facility Plan**

Councilor Perkins moved to adopt the waste water facility plan, which was seconded by Councilor Deno. All present voted yes. In discussion Councilor Perkins asked for clarification on some changes in the amended plan.

1. Chapter 3 page one: There was a change from .5% to 1% in population increase. What precipitated the change? Jadon stated that the change came from Hiedi Williams, of DEQ, review which stated that we must use the population growth rate set forth by the County which for Pilot Rock is 1%
2. Chapter 5 page one last chapter: The lift station by the hardware store is going to go away, the pipeline will go under the creek and down the way. Jadon stated that it will go just far enough to match the grades and tie into the existing line.
3. Chapter 5 page 2, chapter 3 on the page: Is trenching 28 feet no longer on the plan? Jadon stated the City decided to do a gravity fed pipeline this chapter refers to the different options and final alignment. The chapter is considering, in finer detail, the options as to where the best place is for the pipeline, that is most cost effective. Anderson Perry is looking at all the options and the survey information that is being collected will help them to determine the grades and where the pipe line will need to go. They are not at that decision stage yet, the chapter is just discussing some of the options.
4. Chapter 7 page 3: Initially we had estimated 659 hook ups but this table shows 640 that is 19 short. What happened? Jadon explained that the old number was from a couple of years ago the new number was confirmed with Teri as a more accurate number. They are based on how you analyze the connections and determine what the ERU would be for the City. Brad stated that it is better if the number is lower because the lower the number the less loan you can afford which maximizes your grant. You can't make it lower on purpose but it is very good to be accurate which is why we check that close.
5. Regarding the two cells and concern that the bentonite is covered and not exposed. Jadon restated that you will see wetting and drying that the cell can handle it is considered in the design process. The bentonite liner is covered with a cap (6"-12" deep), so if there are areas that get dry it will still hold moisture for a very long time, if it was expose it could crack.

## **F-4 Resolution #591 Revenue Bond Authority**

Council was informed that on Exhibit A, the Notice, there was a change in the final date for an appeal. Jadon explained that they felt it would be better for the mass mailing of the brochure to go out and inform the citizens before the notice came out in the paper. The brochures will go out this Friday. The brochures, the notice and the appeal timeline will still bring us in before the dead line to get it on the November ballot if it is necessary. Anderson Perry will be assisting in folding, stuffing and putting the address labels on the envelopes Teri has provided. The stuffed, addressed envelopes will then be delivered back to City Hall in time for them to be sorted for mass mailing on Friday.

Councilor Perkins asked for clarification why the number in the Bonding Authority is \$5.3 million which is more than the \$5.235 million stated in the facility plan. The bond authorizes \$4.4 million in loans, which is higher than the estimated cost of the loan to cover any uncertainties. The loan application is not in Rural Development yet. The final amount of the rates, interest amounts and grant are still in limbo. The numbers may fluctuate some. We

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are on a tight time line, this will avoid the need to go out again and for a new resolution. Answering Councilor Perkins questions, Brad stated that there is a small chance that the \$4.4m will not be enough, but it is a \$500,000 cushion that should be enough.

Brad and Jadon explained that all bonds are not required to have an election.

The resolution and notice was created by a bonding authority attorney, that is preferred by USDA, so it was not necessary to run it past David our City Attorney.

**On a motion by Councilor Perkins and seconded by Councilor Corwin, Council approved Resolution # 591 authorizing the issuance of the Waste Water Revenue bonds. All present voted yes.**

Jadon went on to present the brochure that will be mailed out on Friday. The text and the design were reviewed. Some changes were suggested that Brad and Jadon agreed to make. They will send the brochure with changes over to Steve and Teri to review in the morning if all looks good they will go ahead and print them.

*Jadon and Brad left the meeting. Steve Draper stepped out to talk with them.*

### **F-11 Ordinance No. 576 Granting a Franchise to Wtechlink Inc.**

Seeing that Jordan McDonald of Wtechlink, had entered the meeting room, Mayor Carnes asked for a motion to move F-11 the Wtechlink Franchise agreement to the next item on the agenda. Councilor Perkins made the motion and it was seconded by Councilor Womack, all present voted yes.

Mayor Carnes appreciated Jordan for his help with the reader board. Jordan stated that he is here to answer any questions Council may have regarding the Franchise agreement for Wtechlink. Council did not have any questions. Being the second reading of the ordinance that has been available to the public for more than 10 days, Teri read the ordinance in title only. **On a motion by Councilor Womack and seconded by Councilor Corwin, Council approved the second reading and set on its final path Ordinance No. 576 granting a franchise to Wtechlink Inc. Councilors Perkins, and Deno voted in favor of Ordinance No. 576. Councilor Hinkle abstained from the vote as he is an employee of Wtechlink. The votes passed by a majority vote in favor.**

Jordan stated that the school will be hooked up about the 15<sup>th</sup> of July. They will be starting on the rest of the City in 3 months working in a grid pattern and expect to have it available to the entire City within 3 years.

### **F-5 Resolution # 590 Transferring Funds in the Wastewater Facility Upgrade Fund.**

**On a motion by Councilor Corwin and seconded by Councilor Womack, Council approved Resolution #590. All present voted yes.** In response to Councilor Perkins question Teri explained that mapping and surveying is an example of professional services.

### **F-6 Resolution #592 Establishing Sewer Rates.**

Teri explained that the \$7 sewer rate increase on the residential rate is a 25% increase. As we have done in the past, all other rates such as businesses, duplex etc. have been increased accordingly at the same 25% increase. However, based on Councils comments at previous meetings, Teri left the Low Income rate unchanged, stating that there are only 9 folks on that rate and did not feel it would affect the eligibility for funding. If Council chose to increase the Low Income rate it would be increased from \$19.93 to \$24.91. Councilor Deno asked how folks go about getting the low income rate. It was explained that they must get the application from City Hall, and return it completed with a proof of income (or lack thereof), that they meet the poverty levels stated on the application. Then Teri would approve the application and give Wanda the go ahead to lower their rate.

**On a motion by Councilor Deno and seconded by Councilor Womack, Council approved Resolution # 592 Establishing Sewer Rates. All present voted yes.**

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Councilor Perkins asked if Teri anticipates a dramatic increase in applications for Low Income. Teri stated that we have tried to get the word out through newsletters, minutes and discussion in meetings and has not seen an increase.

Councilor Corwin asked if a public hearing is necessary to increase the rates. Teri explained that it is reviewed each year and done by resolution if there is a change. No hearing is needed for a resolution.

## **F-7 Adopt the Budget for Fiscal Year 2016-2017**

Teri presented a staff report which outlined changes to the approved budget (the budget that was approved by the budget committee).

**On a motion by Councilor Deno and seconded by Councilor Womack, Council approved Resolution # 593 adopting the budget for the 2016-2017 fiscal year. All present voted yes.**

## **F-8 Second Reading of Ordinance No. 573 Amending the Public Safety Surcharge**

The first reading was June 7, 2016 and the Ordinance has been available to the public for 3 weeks. Teri read the ordinance in title only. In answer to Councilor Doherty's question at the last meeting regarding why this Ordinance is being declared an emergency and why it was not presented to Councilor sooner, which would have avoided the need to declare an emergency, Teri explained that she could not create the ordinance until after the Budget hearing on May 17, 2016, when no opposition was heard and it was safe to assume that the Public Safety Surcharge would indeed only increase by .50. The next possible meeting was June 7<sup>th</sup>. **On a motion by Councilor Hinkle and seconded by Councilor Perkins, Council approved the second reading and set on its final path adopting Ordinance No. 573 an Ordinance Amending the Public Safety Surcharge. All present voted yes.**

## **F-9 Second Reading of Ordinance No. 574 Establishing Rules for Recreational Vehicle Parks.**

Being the second reading and available to the public for more than 10 days, Teri read Ordinance No. 574 in title only. **On a motion by Councilor Deno and seconded by Councilor Womack, Council approved the second reading and set on its final path Ordinance No. 574. All present voted yes.**

## **F-10 Second Reading of Ordinance No. 575 Amending the Zoning Ordinance Prohibiting Marijuana Related Businesses in Any Zone.**

Being the second reading and available to the public for more than 10 days, Teri read Ordinance No. 575 in title only. **On a motion by Councilor Perkins and seconded by Councilor Corwin, Council approved the second reading and set on its final path, adopting Ordinance No. 575. All present voted yes.**

## **F-12 Approve Vacation Request for Teri Porter**

**On a motion by Councilor Corwin and seconded by Councilor Womack, Council approved Teri Porters vacation request. All present voted yes.**

*Steve returned to the meeting*

## **F. INFORMATION ITEMS**

### **G.**

#### **G-1 Department Head Report**

#### **CITY HALL:**

1. The next Council meeting is scheduled for July 5<sup>th</sup>. Will all Council be available the day after the 4<sup>th</sup> of July or should we consider cancelling?
2. East Oregon West Management is requiring cans be curb side. Jimmy Doherty is asking patrons to place their trash cans curbside for pick up.
3. Currently there are 9 residents who have applied for and receive a low income rate on their utility bill.

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4. Working on Bonding Authority Resolution.
5. Working on Recreational Use Immunity Law concerns.
6. At the last meeting regarding the need to declare the Public Safety Surcharge Ordinance an emergency Councilor Doherty asked why it had not been presented to Council sooner which would have eliminated the need for the emergency clause. I did not give an answer at the time but would like to state for the record the reason. The Budget Hearing was held on May 17<sup>th</sup>. Presenting the amendment to the surcharge prior to hearing from the public would have been putting the cart before the horse. Once no opposition was heard from the public it is likely that there will be no changes to the approved budget or the surcharge so I presented the Amended Surcharge Ordinance at the very next meeting, June 7<sup>th</sup>.
7. At the last meeting Councilor Corwin asked if the Gun Club is located in City limits why are they allowed to shoot fire arms. The answer is ... The Gun Club is NOT in City limits.
8. Wrapping up financials for 2016 fiscal year.
9. Met with Kurt Chapman of CIS.
10. Susan Price was promoted to Library director for the Pilot Rock meeting.
11. Working on an Investment Policy, which is necessary if the City chooses to invest city revenue in a high interest bearing account.
12. Planning Commission meeting June 13, 2016.
13. Looking into questions to survey the community. Do not want to rush it so may not make it in time for mass mailing.

*Teri asked Council if they would like to consider cancelling the next meeting July 5, if there was a chance we would not have a quorum. Councilor Hinkle said he would not be able to attend on the 5<sup>th</sup>. Councilor Deno said he would not be here the 5<sup>th</sup>. Councilor Womack said he would still be in town for the 5<sup>th</sup>. Councilors Perkins and Corwin stated they feel it is important to meet on the 5<sup>th</sup> to address the Lagoon issue and start looking into the 5-year plan and survey. Other dates were considered. Councilor Deno relented and said he would change his plans to be at the meeting on the 5<sup>th</sup>. Councilor Doherty was absent, so we were unclear whether he would be available on the 5<sup>th</sup>. It was then agreed that we would hold the meeting on the 5<sup>th</sup>. If we did not have a quorum, but citizens were present with questions regarding the Lagoons we could hear them and address them, but no decisions could be made.*

## **POLICE:**

1. Teri and Chief met with Kurt Chapman of CIS to discuss human resource services that CIS can provide for the City.
2. Chief was interviewed by KUMA Radio about improvements, which have been made with the Police Department over the past 2 months.
3. The background investigation was completed on the potential police officer candidate. The Chief reviewed the background and is preparing a contingent job offer for the candidate to review and sign.
4. The police department is currently working on four (4) solid waste/attractive nuisance violations on the east side of town.

*Chief Caldera added that he made a contingent job offer to Andrew Valdez, 23-year-old, a Hermiston resident, graduated from Hermiston High School. Chief is very impressed with him and feels he will be a good addition to the department. Currently he is a reserve officer for Boardman PD and working full time with the Department of Corrections in Umatilla. Andrew has signed the 3-year employment contract. Chief has filled out the necessary paper work to get him into the August 15<sup>th</sup>, Police Academy and does not plan to bring him on board until one week prior to the academy. He will continue to work at the prison until we are ready to bring him on. While a reserve for Boardman he went through the 6 month Umatilla / Morrow County Reserve Academy, graduating top of his class was asked to speak at the graduation ceremony. Councilor Corwin asked if we will owe Boardman any training costs, since we have hired him away from them? Chief explained that we would not as he was not a FT employee for Boardman and the Reserve academy does not go toward his required training and the police academy.*

## **PUBLIC WORKS:**

1. Done exercising water valves. Now exercising hydrants.
2. Some valves need repair.
3. Spraying for puncture vines. Weed eating and mowing.

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## G-3 Flag at Half Mast Etiquette

Teri explained that a couple of citizens came into City Hall (and also emailed each Council member) concerned that we were not following proper flag etiquette. They stated that lowering the flag to half-mast was only to be done for designated, principal government leaders or service men. Lowering the flag in honor of the victims in the Orlando shooting was not correct etiquette. Teri explained that the City does not take it upon themselves to lower the flag they do so by order of the Governor as well as the President of the United States and she does not feel she can go against the order. Teri suggested that they attend the Council meeting to see if Council felt differently. The Council packet included the Governors order, the Presidential Proclamation as well as a reference from the internet on Flag Etiquette. Councilor Perkins took it a step further, looking into the Federal Code from the US House of Representatives (revised in 1998) the code empowers the President of the United States to alter, modify or repealed the rules for displaying the flag whenever he/she deems it to be appropriate or desirable and may do so by proclamation. Councilor Hinkle expressed his disappointment that the two concerned citizens did not attend this meeting and yet Council is taking the time to go over it when they are not present to respond. Teri stated that she felt it was a viable conversation as these things tend to resonate in the community, this gives Council the opportunity to be informed, should they be approached regarding the matter.

## H CONSENT CALENDAR

Bills Total: \$11,134.43

On a motion by Councilor Deno and seconded by Councilor Corwin, Council agreed to accept the consent calendar. All present voted yes.

## J COUNCIL COMMENTS

Council Perkins followed up with Steve Draper regarding Keith Jones concerns with the trees in the park. Steve stated that nothing has happened yet.

Council Perkins brought up a concern regarding the Recreational Use Immunity Law. The following was discussed:

1. Johnson vs Gibson, Oregon Supreme Court ruling, which held that individual government employees are not “owners” under the Oregon Public Use of Lands Act and are no longer protected by recreational use immunity.
2. Recreational Use Immunity still applies to Cities. However, it no longer applies to their employees.
3. The plaintiff must prove that the city employee was negligent. Hypothetically if it was found that our maintenance employees did not do their due diligence checking the equipment at the City park or the Bike Pit, they could be found negligent and could be sued.
4. Teri had prepared a small packet with talking points on the subject as well as the articles and the Recreational Use Immunity statute, which she handed out to Council and staff.
5. The City has intended to deed the bike pit to the OHV board for some time, but delays in legal description issues and then the possibility that the City may need it as a possible location for the lagoons has halted the progress. With DEQ’s recent approval of our Wastewater Facility Plan, we feel certain that the Bike Pit will not be needed and the deeding is back on the table.
6. In the past such law suits were dismissed citing recreational use immunity. The recent ruling, has now allowed such law suits to proceed, siting that the law was not intended to immunize the employees of the land owners.
7. The plaintiff has the burden or proving that the employee was negligent.
8. The City has a statutory duty to defend the City employees (covered by CIS).
9. The City would have to present evidence that the employee was not negligent. Such evidence would be a documented regular routine maintenance program and inspections.
10. After inquiries with Portland Attorney, Discretionary immunity was also considered. Which would require the city to make public that it is aware of the hazards and has made a policy choice not to do anything about it. No employees would be doing maintenance at the Bike Pit, therefore they cannot be found negligent.

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11. Michael Corey of Wheatland Insurance (CIS) via email stated for the record that once the City has deeded the property to the OHV board, the City would no longer have any liability for the property...
12. The deed is being drawn up at this time and we hope to have it recorded very soon.
13. Councilor Perkins asked if would behoove us to pad lock the Bike Pit until the deed is done, and we do not assume any unnecessary risk. Steve stated that we would need to lock up Veterans Park and the City Park as well.
14. The Bike Pit is a higher risk than the City Park, Mrs. Slabik agreed.
15. Jackie Carey stated that the Bike Pit has signs posted everywhere, that they ride at their own risk.
16. Councilor Hinkle stated by locking up the Bike Pit, we may be sending the message that it is hazardous.
17. It is likely that the deed will be ready for approval at the next Council meeting.
18. The key is to have a good maintenance program. This is all so new, CIS does not have a Maintenance Program Example, yet. Staff is working on putting a program together.
19. The City is still covered under Recreational Use Immunity.
20. The City maintains the parking lot, chain link fence, signage and weeds. The City could choose to make it known that city employees will no longer do any maintenance at the Bike Pit, this way they could not be found negligent and could not be sued.
21. Attorneys (Portland and CIS) have stated that a legislative fix is in the works.
22. The City has never incurred any cost due to accidents or liability at the Bike Pit.
23. Feeling more comfortable limiting use at the Bike Pit, **Councilor Perkins made a motion to padlock the Bike Pit until we have a clear understanding of our liability and where we are legally on the use of the Bike Pit / OHV park. Motion died for lack of a second.**
24. The Bike Pit has been closed for the last week for maintenance and prep for the upcoming event.
25. The Recreational Use Immunity Law applies to private property owners as well.

## K. EXECUTIVE SESSION:

None

## K. ADJOURNMENT

Council agreed to adjourn at 8:52 PM.

APPROVED \_\_\_\_\_

ATTEST \_\_\_\_\_