

# CITY OF PILOT ROCK

## COUNCIL MEETING

March 20, 2012

7:00 PM

### A. Call to Order

The regular meeting was called to order by Mayor Virginia Carnes at 7:00 pm. Council members present were Kacie Moss, Annie Tester, George Hall and Shawn Kirk on the speaker phone. Also present were City Recorder Teri Porter, Public Works Director Steve Draper and Police Chief Darren Richman. Citizens present were Jeff Mills, Jimmy Doherty, Mike Nelson, Packy Doherty, John Taylor and Mary Lue Slabik.

### B. INVOCATION

Pastor Mike Nelson gave the invocation.

### C. PLEDGE OF ALLEGIANCE

### D. APPEARANCE OF INTERESTED CITIZENS

### E. PRESENTATIONS

**Jeff Mills Chairman of the Board of Directors of the Pilot Rock Bike Pit:** Addressed Council stating that he had a mobile home moved onto the City owned property that the Bike Pit is using. He stated that he is in the process of putting the paperwork together for the County and was under the impression that it would be ok to move the mobile home onto the property. The building is to be used for storage, and a sign up booth to conduct bike pit business out of. Currently they are running their business out of a Suburban which does not look professional to racers showing up. They have plans to paint it and skirt the mobile, to make it look better, but it will not have power or water to it. A generator would be hooked up to it during events. He understands now that he may have jumped the gun and is here to ask Council for a variance to allow this structure to be at the Bike Pit. Jeff stated that he does have the title, and is in the process with the County to finish the permit to transfer it here. He has stopped that process because when he discovered this might be an issue the County informed him that it would be best to be sure that he had permission and permitting with the City before he spent any more money in case they had to haul it off for disposal, if it is not something the City is going to approve. Mayor Carnes asked what exactly he was asking for. He stated he would like a permit to be issued for this 12 x 40 mobile home, located in the parking lot, it will meet all codes for tie down wind resistance. Teri Porter clarified that the Bike Pit is City owned property and he is asking that the City apply for the permit on their behalf since they do not own the property. Teri also stated that the City just became aware of the structure being on the property. Councilor Hall asked if there was a crisis that would rush us to make a decision. Teri stated that the crisis is that there is a mobile home sitting on City property that we were not aware of prior to it being moved onto the property. Staff felt it was important to

bring it to Councils attention as well. Jeff stated that he understands that the Chief is concerned with it being there. Councilor Hall asked the Chief what his intent was when he contacted them, was it to direct them to remove it? Chief stated that his intent was to determine why it was there, what year it was, and how it got there. It was on City property and the age of it also concerned the Chief. The Chief stated that it was a 1967 mobile home. Jeff Mills stated that it is in good shape and still has the tongue attached to it. Councilor Hall stated that for whatever reason Council is always behind the eight ball when it come to the Bike Pit, it's always after the fact, we call emergency meetings to cover the Bike Pit so that you don't get into trouble in regards to permission. There are people in this community that are getting tired of that process and it is throwing a cloud over your program. Councilor Hall also stated that he was not aware of anyone here that it against the concept of having a group that is carrying out the functions that the Bike Pit is doing. Councilor Hall felt it was really bad that the building was moved onto City property without first getting permission or a permit to do so. Councilor Hall also pointed out that the City is attempting to deed this property over to the Bike Pit once the Bike Pit obtains a 501c3, which would eliminate a lot of your obligations to the City. We have to light a fire under the process to get the 501c3 taken care of. Councilor Hall does not feel it is in the City's best interest to allow the mobile to stay there. The City actually is involved in similar issues that are in litigation right now. So it puts the City in a difficult position. Councilor Hall would like to see the Bike Pit successful and is willing to listen to options that may help them with this issue. Jeff Mills, stated that they were under a lot of pressure to make sure the fund raiser went on and getting this mobile was a now or never shot. Jeff stated that he made a few verbal attempts to make sure that it was going to be ok. He was under the impression that it would be ok or there is no way that he would have purposely done something like that. Councilor Moss asked about the status of the 501c3 application. Jeff Mills stated that he understands that the accountant will be here to address council and explain the status of the 501c3. He does not know the exact date when that would be, but would let us know. Councilor Hall suggested the sooner the better. Councilor Tester asked what our ordinance states regarding the age of the trailer. Chief Richman stated that he believes the ordinance states that 1976 is the oldest that can be placed on property. The Chief also restated that it is on City property and that the City would have to apply for the permit. Teri Porter added that she would need time to research because it is on property that is within the city limits, is zoned Heavy Industrial and no utilities would be hooked up to it. Jiff Mills stated that they are aware that they cannot have a living structure on the property and they never will have. Teri Porter also stated that, had they come to the City to ask for consideration to place this structure prior to moving it, given the age of the mobile in all likelihood the permit would not have been granted. Mayor Carnes suggested that Jeff Mills meet with Teri to discuss options. Teri stated that she has jury duty tomorrow but would be happy to make time to meet with Jeff Mills anytime after. Councilor Hall has a problem saying No to the Bike Pit, but he has a bigger problem saying Yes and becoming a part of the Bike Pits problems. Councilor Hall suggested that staff be given time to take a look at the issue and sort out all options. John Taylor suggested that this issue would be better addressed after the deed is transferred, and the City would not be the one making the application for the permit. Teri stated that would be best, but she does not know how long it is going to take for the 501c3 to be finalized it could be months, are we going to allow that trailer to sit there the while we wait? Councilor Hall restated that the time frame for the 501c3 is an issue. We are challenged to keep the Bike Pits costs to a minimum and the City has to be allowed to

manage the property properly. One way is to say it has to go until the 501c3 is final and the property is deeded over and proper permits can be applied for at that time to have it placed on the property. The City cannot have the liability that would go along with having this type of structure on that property. Councilor Tester stated that she went out to the race for the first time ever and was shocked at the amount of people that come into our community for the bike events and it would not be pleasant for her to have to say at some point that the structure would have to be removed, but absolutely feels that the liability for the community is a serious consideration. Councilor Tester added that what the Bike Pit brings to the community is amazing. But hesitates, having a 1969 mobile place on City property. Chief Richman suggested giving them 45 days, have it moved over to the fence on the west side and have the doors screwed shut so no one can get in those does. Then by the end of April the accountant would come before Council for an update on the status of the 501c3. Councilor Hall stated that would be fine but we have to find out what the City's liability is with a non conforming structure on that property. The City's response to this request must be subject to a response from CIS regarding the liability. Teri Porter suggested that if CIS states that the liability is too great, then there is no question that the structure would have to be removed. But if the liability is covered then Staff could present a staff report at the next Council meeting which would outline the liability, ordinance concerns and 501c3 issues. Councilor Hall stated that even though we may say that we will give you until April 30, 2012, if anything comes up in that time frame staff will be instructed to make a decision not in the Bike Pits best interest but the City's best interest. On a motion by Councilor Hall and seconded by Councilor Tester, the bike pit is given 45 days to figure out where they are with 501c3 and at that point and time staff can come to Council with a recommendation to place that structure on the property and the structure is allowed to stay there for 45 days subject to conditions that were just laid out. All present voted yes.

**John Taylor addressed Council:** Mr. Taylor thanked Council for the opportunity to speak to Council and welcomed the citizens that came tonight. Mr. Taylor stated that he sent out a memo dated 3-10 and 3-19 and asked if anyone had any questions regarding the memo. No one had a question. Mr. Taylor then asked if anyone had an objection of having them included in the minutes. There were no objections.

**Harry Bose and Todd Peck CPA of Read and Bose to Discuss the 2010-2011 Fiscal Audit:** Copies of the Audit were given to each Councilor and staff member and there were copies available for citizens who attended the meeting. Mr. Bose gave a brief presentation outlining concerns and recommendations. In the budgeting area, there are some interfund loans that relate to the water system that need to be zeroed out with some transfers. Addressing Teri Porter Mr. Bose said he would work with her to show her how that gets done. Also in the budgeting area Mr. Bose suggested splitting the Utility Reserve Fund into a Water and a Sewer component, that is more consistent with generally accepted accounting principles and how it would appear on financial statements. Mr. Bose also suggested that the City commit the Industrial Park Fund to a particular purpose or purposes. That can be done by an Ordinance. Then those expenditures would not have to be pulled into the General Fund. Due to a change in accounting standards, a new standard that is effective this year. In the areas of controls Mr. Bose stated that he would like to see more controls over the bank reconciliation process as well as the controls over collections fines and fees. Mr. Bose asked if there were any questions. Councilor Hall asked how Mr. Bose would classify the Audit in

general terms. Mr. Bose replied by saying it is an unmodified opinion which is a clean opinion which is the best possible outcome. Mayor Carnes asked Councilor Kirk (who attended via speaker phone) if she had any questions. Councilor Kirk stated that she did not have a question.

Teri Porter asked Council to add another item to the agenda. F-3 Resolution No. 540 Transferring funds to Pay Attorney Costs. On a motion by Councilor Tester and seconded by Councilor Moss, Council agreed to add Resolution No. 540 to the agenda all present voted yes.

#### **F-1 Public Hearing: Variance for a Residence in a Commercial Zone - Jimmy Doherty**

Mr. Doherty addressed council with a request to have a variance allowing him to have a residence in area zoned Commercial. Teri Porter pointed out that this house has been used as a residence independent of a business for decades, but could not find that a variance had been issued in the past. This is just a formality to ensure that the issue is properly addressed and give Mr. Doherty the paper work he needs to go forward with plans for his house. On a motion by Councilor Tester and seconded by Councilor Hall, Council approved the variance for allowing 221 SW 2<sup>nd</sup> to be used as a residence. All present voted yes.

#### **F-2 Request for Maintenance Expenditures – Steve Draper**

Steve Draper addressed Council stating that the City will need to spend \$5000 to replace old water meters. This is done annually. Also Well house #1 needs to have its roof repaired, which will cost approximately \$1,500. Steve requested Councils approval for these expenditures. Councilor Hall suggested purchasing a meter tester that may. They say the newer meters should last long, Councilor Hall would like to know if AWWA has accepted that theory. We may want to consider purchasing a tester that runs about \$3000, to test the meters before replacing them. It may save us some money in the long run. On a motions by Councilor Hall and seconded by Councilor Tester, Council approved the requested expenditures. All present voted yes.

#### **F-3 Resolution No. 540 Transferring Fund to Pay Attorney Costs.**

Teri Porter stated that the 2011-2012 budget allotted \$3000 in the General Fund, Industrial Park, Legal and Audit line item. Currently the expenditures of that line item is \$10,111 which is \$7,111 over budget. Teri is requesting Councils approval to transfer \$17,000 from the Economic Development Fund, Capital Improvements, line item. This line item has a budgeted amount of \$123,921 with \$1,990 spent so far this year. The amount being requested will cover the current balance as well as any additional legal cost that may come up in the next few months. On a motion by Councilor Tester and seconded by Councilor Moss, Council agreed to pass Resolution No. 540, transferring funds from the Economic Development Fund to the General Fund. All present voted yes.

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

Teri Porter stated that she wanted to add to her report. Teri informed Council that the Bark Company is 3 months behind on their rent and that a late notices had been sent. Teri received a response which stated that they would have a payment to us in April then should have us caught up by June. Teri then sent out a letter of demand and received a response stating that they would have us paid in full by week ending March 30, 2012.

Teri also added that Angel is in the process of looking for grants and or donations to help fund the Swim program and asked if she needed a motion allowing her to apply for grants that she may find. Councilor Moss, stated that Angel can look for grants but before submitting any applications they must be brought before council.

Councilor Tester asked Steve Draper if he had contacted DEQ regarding the sale of Masonite.as directed by Council? Steve said he had contacted Katie Robinson which is in charge of the Masonite facility and asked if there was anything we needed to do prior to the sale of the property. She wanted to be sure we were covered for any liability as far as contaminants down the road and he told he it was in the contract. She also pointed out that we had to disclose the two deed restrictions, Steve stated that we have. Within 10 days after the sale we have to name the new person on the title.

## **H-2 Consent Calendar**

On a motion by Councilor Tester and seconded by Councilor Moss, Council agreed to accept the Consent Calendar. All present voted yes.

Teri added that the futures agenda did not get added to the packet but have passed out copies to include in tonight's meeting.

## **I. City Council Comments**

## **J. EXECUTIVE SESSION**

### **ORS 192.660 (2)(e) Real Property Transaction.**

Teri Porter stated that we will go into executive session but we may come right back out to discuss things in an open regular session. Councilor Hall clarified that we are going in executive session to discuss the sale of City owned property to A&V Investments.

Council went into executive session at 8:23 pm Councilors present were Moss, Tester, Hall and Kirk along with Teri Porter, Steve Draper, Darrin Richman and Mayor Carnes.

Council came out of executive session at 8:29 pm. Mary Lue and John Taylor returned to the meeting.

Councilor Hall stated we came to the conclusion that we should not have been in executive session so we came out to discuss these items. Councilor Hall said we should set up a meeting with our attorney to advise us on what our next step is and how to handle counter offers. Also the Council has had quite a bit of discussion as to whether

or not we are still in negotiation. And we need a better understanding of what the laws are regarding a public hearing on the sale of City owned property, specifically if counter offers occur or any changes are made to the contract since the last public hearing, before we move to finalize anything. Teri Porter stated that she would contact the City Attorney to settle on a date for a meeting when all can be present.

Councilor Tester added that we need all Councilor present, or at least to know if they are not coming. If we know that there is not going to be a quorum then the rest of us would not waste our time in coming just to find out we do not have enough Councilors for a meeting. There was lengthy discussion regarding the need to improve Councils attendance and the burden it puts on the Councilors that do show up consistently. Council agreed that Teri should send out a letter outlining the policy as stated in the City Charter.

Mayor Carnes asked Councilor Kirk if she could sign her name by proxy to the Resolution and the Bills. Councilor Kirk said that she could.

Teri Porter asked if Council could settle the issue regarding the need for a Public Hearing tonight since we have a quorum. Because if it is decided to have another public hearing it needs to be posted in the paper 10 days prior to the hearing. Councilor Tester addressing the public more specifically Mr. Taylor, stated that she understands that a public hearing is so that we can hear from the public on whatever it is we are talking about isn't that right. Councilor Hall stated that the City is obligated to have a public Why do we have on our agenda appearance of interested citizens, we hear from our citizens all the time, John give us a lot of feed back why do we need to have a public hearing what is the difference? John stated that under Oregon Law that there are requirements for the sale of publically owned property and one of those is that you have to have a public hearing. Mr. Taylor stated that he was told that proposed contract was all in favor of Pilot Rock, as he read through it that he found 4 areas that are not in favor of Pilot Rock, that's why he feels as stated in his memo that there should be another public hearing. Mr. Taylor also asked that it is put in the Newsletter, so that people know what is going on. Mayor Carnes asked Teri how many meeting we have had regarding A&V? Teri said that they had gone back and counted about 43 meetings. Mayor Carnes stated that she publishes the Newsletter twice a month, and there is no way she could keep up and as far as she knew it was not public information. Steve Draper stated that when we do have a public meeting it is required by law to post it in the newspaper and to post it in 3 prominent places in the community. Mr. Taylor pointed out that when we were discussing the \$1200 for the Slabik property a letter was sent out with the utility bills. Now we are talking about a transaction of nearly ¾ of a million dollars. You have an obligation to inform the public of what is going on. Mayor Carnes asked what she could put in the newsletter. Mr. Taylor stated she could put in the payments, terms and conditions. Councilor Moss stated that if people are curious they need to take some initiative too. Mr. Taylor stated they need know enough to be curious. Mrs. Slabik asked how many times was it in the newsletter about negotiating with A&V and the public hearing. Teri Porter, stated it was not part of the process as she learned it but that she would have no problem putting it into the newsletter as it is stated to go into the

newspaper. Teri also stated that both hearing were posted in the East Oregonian prior to the hearings. In addition Teri stated it is her understanding that you do not have to keep holding public hearing every time there is changes to the contract as long as it is for the good of the of the City. Mrs. Slabik asked for clarifications that there were 2 public hearing on this contract. Teri stated that there was a public hearing prior to the first contract as is required. Then a few months ago another public hearing was held to discuss the changes to the contract. Councilor Hall stated that Council needs to agree whether we want to have another public hearing or not. There are reasons to go either way, there is no law that says you can't have one, but there are laws that say you must have one. Councilor Moss made the point that if that is what the public is wanting why not, it is input. Steve Draper suggested that if and when we have a public meeting, that we hold off till after we have a final document for them to review. Otherwise if you have a public meeting after every change you would have a meeting every week. Teri clarified that the public meeting would be held before the document is signed. Councilor Hall stated that how we conducted ourselves is important. There were comments made that if Council voted on it then it was a done deal, but then the attorney clarified that it is not a done deal until we have a public hearing. Teri stated that the way she sees this progressing is that we need to set a time for all of Council to meet with the City Attorney to discuss other issues that have come up with this contract and possibly put together contract with whatever changes then after that the decision would be made when that public hearing would be. Councilor Hall addressed the citizens that show up all the time it is partly their responsibility to help get the word out. It is difficult for Council to understand what the public wants when we only get a certain group of people that are sequestered by one or two people. That is not fair to the system nor is it fair to the Council to have to make a decision when those are the only people who are putting their input in, because then we wind up with a head butt. We need to get away from the head butt. So a part of this responsibility lies in John and Mary Lue's hand because you have now been informed that we will more than likely have another public hearing. And what Steve said is true that when we go into that public hearing we will have a document that is ready to sign subject to a public hearing. Mr. Taylor stated that any City document that you pick up it encourages citizen's involvement. Mrs. Slabik stated that there was a group of people ready for the one meeting that was cancelled. Councilor Hall stated he understands but that could happen again. Councilor Moss stated for the record that she too would like to see people here that are given the opportunity to form their own opinion and that are not spoon fed. Mr. Taylor stated that that is where the newsletter would come in. Mrs. Slabik feels it would be worth the stamp for each residence to notify the citizens when it comes to a transaction as big as this. Mrs. Slabik stated that we are all here for the best for all the citizens of Pilot Rock. Councilor Hall stated that he is sensitive to the comments made that these Councilors are not here with the best interest of the City in mind.

## **K. ADJOURNMENT**

On a motion by Councilor Tester and seconded by Councilor Moss, Council agreed to

adjourn the meeting at 9:05pm. All present voted yes.

APPROVED

ATTEST



City Council and Citizens of Pilot Rock (please read it all)

## “We The People”

Dedicated to Informing the People

ORS 192.660(2)(E) quote: A Governing body **MAY** go into executive session (without the Public) to deliberate with persons designated by the governing body to negotiate real estate transactions.

**THE COUNCIL, BY MOTION, HAS NEVER DESIGNATED ANYONE TO NEGOTIATE.**

A formal legal request was made of the City for A&V insurance binder/coverage. A Certificate of Liability Insurance was furnished.

The contract dated July 23, 2010, requires both Liability and Property Damage (section 9 (a) Liability and section 9 (c) Property Damage).

**It strongly appears that A&V has been using the City property since July 15, 2010 without the proper required insurance coverage.**

Oregon 221.725 and 221.727 Miscellaneous Provisions. Regarding selling public property. 221.725 section 4 quote, "including an appraisal or other evidence of the market value of the property, shall be fully disclosed by the city council at the public hearing." 221.727 quota, "a city council may adopt, after public notice and hearing, a procedure for the sale of individual parcels of class of city-owned real estate.

**An appraisal was not furnished and to the best of my knowledge, the procedure option was never passed by the Council.**

The City Council has been hesitant to terminate the arrangement with A&V, but by terminating the agreement with A&V and retaining the Bark Co property (allowing the \$54,000 to go to the City and not A&V) then offer the remainder (36.08 acres) at greatly reduced price. Maybe a local businessman might even purchase the remaining acres for cash.

Please read the contract dated July 23, 2010 section 27, Dispute Resolution. Negotiation, mediation and Arbitration. Then read the proposed contract section 17.2. Isn't that interesting. Who changed it? Who benefits? ---A&V and the attorneys?

On January 3, 2012, a Public Hearing regarding the A&V contract was held. The purpose of a Public Hearing is to listen to Citizens opinions and comments. How could the Mayor and Council expect to get opinions and comments---the Council had discussed, negotiated and developed the A&V contract in Executive Session (closed to the public), the contract had not been openly discussed in the Pilot Rock Newsletter. The contract was made public just 4 days before the Hearing. The person who did all the negotiating for the City was absent. The Mayor and some Councilors were argumentative, would not answer questions, misled those with comments. It was a sham. Don't take my word for it. Read the January 3, 2012 minutes on the inter-net, they speak for themselves.

**GET INFORMED-SHARE YOUR CONCERNS WITH OTHERS---WRITE TO THE CITY COUNCIL!!!!!!!!IT'S YOUR CITY!!!**

3 10 12 john taylor

Addition on 3 19 12

Regarding item two above: Teri, the City Recorder is getting written clarification.

Supposedly, the proposed contract (blue) was only to benefit the City, it was stated another Public Hearing was not called for. THAT IS NOT TRUE!

1. Section 7.1 was changed for replacement cost to actual cash value.
2. Exhibit "B" added City property to the transaction.
3. Section 13.1 added the south well (#4) to the transaction.
4. Section 14.1 added City costs.

The changes to the proposed contract were not all in favor of the City---

therefore, please adequately and properly inform all the Citizens of Pilot Rock of all the terms and conditions in the proposed contract and HOLD A PROPER PUBLIC HEARING.

A principle in real estate. Up to the time the second party accepts the counter-offer, the first party may withdraw the offer.

In view of that principle, and the fact A&V has not responded to the City's counter, counter offer, the City is within it's rights and has the opportunity to withdraw it's offer.

SUGGESTION TO SERIOUSLY CONSIDER!!!!

1. Withdraw the City's offer.
2. Remove the Bark Co's 15 acres, City keeps the \$54,000.
3. City retains both wells, water in any form is much too valuable to convey.

Sell the water but keep ownership.

4. Put the 36.08 acres (tax lot 1301) back on the market for everyone to

make their best offer. Close offers in 60 days. It will take another 30 days to get it closed

4. Give A&V 90 days, free lease and an opportunity to make an offer on the remaining 36.08 acres, tax lot 1301. At greatly reduced price.

5. City retain tax lot 1303 (4.61 acres) change zoning to allow RV Park. Offer for ground lease to reliable purchaser(with payment adjustment every 3 years based on inflation) or offer for sale \$125,000 (based on Rupeville).

6. City retain all revenue for T-Mobile's installation on the water tower.

Hopefully the City can sell tax lot 1301 for enough *cash* to pay off the water/Kinuza loan. The Bark Co's \$54K plus the cash from the sale of tax lot 1301, plus income from the sale/lease of tax lot 1303 plus the \$43K loan payment savings from the loan, plus income from T-Mobile.

*THIS KIND OF ARRANGEMENT WILL DEFINITELY BENEFIT THE CITY AND THE CITIZENS.*

**3-19-12 john taylor 541 377 1090**