

GLADSTONE CITY COUNCIL MEETING MINUTES – November 12, 2013

ROLL CALL

The following city officials answered the roll call: Mayor Wade Byers and Councilors Hal Busch, Ray Jaren, Kari Martinez, Thomas Mersereau, Lendon Nelson, and Neal Reisner.

ABSENT: None

STAFF

City Administrator Pete Boyce, Rhonda Bremmeyer, Senior Center Director; Irene Green, Library Director; David Doughman, City Attorney; Stan Monte, Fire Chief; Jolene Morishita, Assistant City Administrator; and Scott Tabor, Public Works Director.

Mayor Byers led the flag salute. Mayor Byers asked for a moment of silence for Herb Beals, the author of three volumes of Gladstone's history and did many wonderful things in our community.

BUSINESS FROM THE AUDIENCE

Mike Madler, President, Gladstone Fire Department Members Association reported for the past 115 years they have been doing a food and toy drive around the holiday season to raise food and money for the families in Gladstone that are in need. He is here tonight to ask the Council for a donation, last year the donation was \$500.

*Councilor Len Nelson moved and Councilor Kari Martinez seconded a motion to approve a donation of \$500 to the Fire Department Food and Toy Drive.
Motion carried unanimously.*

Councilor Martinez asked if donations received for Portland Toy and Joy go all over the Metro area or just to Portland. Mr. Madler stated to his knowledge the donations for Portland Toy and Joy are for Portland only. All of the Gladstone Food and Toy drive donations will go towards families within the Gladstone city limits. Pat McMahon reported he is the liaison for Portland Fire Toy and Joy drive. Toy and Joy started 99 years ago and is now a nation-wide organization of individual fire departments. Unless the donations are given specifically to a fire station, they will generally go to the areas that are being served (Vancouver, Clackamas County, Washington County and the City of Portland).

Donna Todd, 16710 SE Valley View Road stated she is here to speak about the dog park. They live across the street from the park and she is frustrated over the noise disturbance, security, stranger danger in the neighborhood, homeless people in the woods, and feels her property value will go down. She submitted the reasons for her objections, pictures, a statement on how the dog park affects her, and an escrow statement showing restrictions for Sherwood II area. She read a statement summing up her concerns.

Ken Yielding, 7000 Oakridge Drive is adjacent lot to the dog park. He heard about the rezoning issue from the Todd's and asked which lot was going to be rezoned. He wanted to know if anyone has looked at the financial implications of the neighbor's property values with an open space zoned piece of land. If the water towers are on a residential lot, how can it be rezoned? Mayor Byers reported the water towers are not in the Sherwood II subdivision. Mr. Yielding noted there are feces now in the Nick Shannon Park area. A plan should be looked at that would keep feces out of the play-park. Donna Todd has passed around a petition and has received over 25 signatures opposing the dog park and especially changing the zoning rights. Mayor Byers stated the process for a zone change is City

Staff prepare the paperwork, pass it on to the Planning Commission, a public hearing at the Planning Commission, testimony will be taken, and the Planning Commission makes a determination which is then sent to City Council for review and final decision.

Harry Todd, 16710 SE Valley View Road stated he is here to speak in opposition of the dog park. This is affecting both he and his wife.

CONSENT AGENDA

Item(s) Removed from the agenda:

2. Approval of Personal Services Contract for Municipal Judge Linda Beloof
4. Payment of October Claims

Councilor Nelson moved and Councilor Jaren seconded a motion to approve Consent Agenda items:

1. *Approval of October 8, 2013 Minutes*
 3. *Approval of Resolution No. 1032, re: City Council Guidebook*
- Motion carried unanimously.*

2. Approval of Personal Services Contract for Municipal Judge Linda Beloof Councilor Reisner asked how municipal judge evaluations are done. Mayor Byers stated an evaluation group reviews the applications received. City Administrator Boyce reported there is no formal process for that review; however, under the Charter the City Council is the authority to review the position of the municipal court judge.

Councilor Reisner noted the time of service is mentioned in Exhibit A, however Exhibit A does not mention a list of performance. Does this refer to a time frame or a time of day? Assistant City Administrator Morishita stated it refers to the time that court would be held.

Councilor Reisner asked if the contract covers pro-tem judges and how are they selected. City Administrator Boyce reported the judge will select from a pool of judges to come in and do work on a case-by-case basis. The pro-tem judges are paid directly.

Councilor Reisner suggested changes to correct gender (his/her).

Councilor Jaren asked if there is anything about this contract that can be construed that the judge is an employee not an independent contractor. City Attorney David Doughman said no; Section 8 of the contract makes it clear that both parties are viewing her work as that of an independent contractor not employee.

4. Payment of October Claims. Councilor Reisner asked why the Judge was reimbursed for attending a conference. City Administrator Boyce stated the previous judge had attended conferences and was reimbursed. The payment will be pulled and there will be a meeting with Judge Beloof to determine if there will be a change to the contract. It will be readdressed with Council next month.

Councilor Reisner moved and Councilor Busch seconded a motion to approve Agenda Item #4, Payment of Claims, with the exception of \$214.38 payment to Judge Beloof.
Motion carried unanimously.

5. **CORRESPONDENCE** -- Mayor Byers acknowledged receipt of:

- An email from Rose Johnson regarding Damascus legal bills
- A letter from Rose Johnson was received today that will be put online as additional correspondence

REGULAR AGENDA

6. Approval of Rinearson Natural Area Restoration Project Agreement. City Administrator Boyce reported he and Councilor Busch have been working with John Runyon, Cascade Environmental Group and Scott Tabor, Public Works Supervisor for years on the Rinearson Pond located in Meldrum Bar Park. City Council designated it as a natural area. There is a dam with some open water behind it. They have been working with the homeowner's association who owns half the pond and some of that area. There is an opportunity to tap into some EPA funds for the Portland Harbor Restoration. He presented an agreement with Rinearson Natural Area LLC and would like to have Council feedback.

City Attorney Doughman reported this opportunity stems from the Portland Harbor Superfund Project. The trustees of that project (variety of interest groups) have identified a number of projects around the region where parties who contributed to the environmental damage over the years would be potentially responsible for funding. The Rinearson area was one that came up on their radar and ranked very high as a project that could be successful. If the trustees approve the project, the potential responsible parties (PRPs) would be able to purchase mitigation credits to reduce their overall liability for the problems in the Portland harbor. The Cascade Environmental Group has a separate company for the Rinearson Natural Area LLC. This group is well versed in doing these types of wetland mitigation projects, environmental mitigation projects, and restoration projects.

The agreement will be with Cascade Environmental Group (consultant) and they will be the ones responsible for having an agreement with the trustees over what the specifics of the project would be, how it would be carried out, what it would look like, the design, building the project and shouldering the larger share of the costs and risks associated with the project. When the construction is complete, the Cascade Environmental Group will be responsible for ten years to maintain the site and at the end of the ten years the PRPs would be funding an endowment for all the sites that are a part of the superfund process. That endowment would then maintain the Rinearson area forever. The City has some potential liability with respect to the state of the pond (salmon species, Endangered Species Act issues). There is the possibility the City of Gladstone will realize some profit on the project; it does allow for the Cascade Environmental Group to recoup their costs. If the revenues from the responsible parties exceed those costs, it would be split 50/50 with the City.

Subsection 3(b) states the project is at the sole cost of the company. The City will be paying an initial amount of \$44,000 for a sediment study and an issue of water rights that exists as a result of the dam. An additional \$10,000 will be assessed for city attorney costs.

Section 6 addresses the issue of security. After Cascade goes through its due diligence and designs to go forward, if construction is stopped because of an act of God or catastrophe, the City has no short-term or long-term liability except for the \$44,000 for this project. \$125,000 under this section was determined to be a fair and reasonable to account for the what-if situation and bring the site back to something that is stable and not an incomplete wetlands

mitigation project. These funds will be put into an escrow account for that type of situation. After construction, what is required is a maintenance obligation for a ten year period.

A representative from the homeowner's association requested additional language on Page 2, "...removal of the existing dam, placement of water control structure, and creation of open water areas located near the Robinwood Revere Property Owner's Association property."

John Runyon, Cascade Environmental Group, Rinearson Natural Area LLC reported revenues will come in over a period of years depending on negotiations with the PRPs; however the City will be paid as soon as possible, relative to other expenses.

Questions from Council

- Question: Is it possible to request funds/grants from other sources. Answer: Mr. Runyon said yes. One of the first areas explored when they realized the dam was an issue for fish and a liability to the city was a whole range of potential funding sources, including the Watershed Enhancement Board. After talking to them they informed us that because of our location and because of the kind of restoration that could be pursued there, and the fact that it was approximate to Portland Harbor, they probably would not fund a grant for restoration there because it was more likely to get funding through the Portland Harbor super-fund process. You can always apply for grants, but it would be a low probability because there are other sources out there.
- Question: Where is there an obligation for the PRPs to buy X number of credits at Y dollars in a certain time? Answer: Mr. Runyon noted a separate process is negotiated between the trustees and the PRPs. The trustees will determine through that negotiation a sediment value for each PRP. That will be the number of credits they need to purchase. The credit price would be a negotiation so the business would negotiate with the PRPs to try and get the most value they could for the credits to pay for the project.
- Question: Should the PRPs be nailed down before these contracts are committed to? Answer: Mr. Runyon said no, first the site must be established and establish the number of credits through the trustee process that are available. Then put out the for-sale sign for the PRPs that you have credits. Rinearson Natural Area LLC now has a memorandum of agreement with the trustees that they are potentially a project developer for this; contingent on an agreement with the city and contingent upon an agreement with the property owner's association. Then they can market that restoration project for the sale of the credits.
- Question: There will be no consummation of an agreement on the number of credits or dollar value of credits until some future time? Answer: Mr. Runyon said correct, it is a prescribed process that requires review by the trustees of the restoration project. They then would determine the number of credits based on fish habitat and other ecological values there for removal of the dam, creation of the open water areas, and all the other habitat areas there. It would determine the number of credits which establishes the base and then they could go out and market to the PRPs. They have reached out to PRPs initially to see if there is interest and in fact there is strong interest in potentially purchasing credits and interest from the trustees in potentially purchasing credits that

they could use in future sales directly to PRPs also. There are a number of mechanisms in place.

- Question: Because of the nature of this project, there should be a letter of intent to purchase. Is this defined by the Federal super-fund process? Answer: Mr. Runyon said the super-fund process is defined under the law. Legally it is a prescribed process. This is separate from the cleanup process. There is a cleanup that will happen through the settlement process directly from Portland Harbor. This is a settlement for past damages and separate from the cleanup and holds the PRPs responsible for the past damages and restoration is the remedy for those damages.
- Question: There seems to be no process for a party like Gladstone who is remote from the actual area where the cleanup is going to occur to have some confidence that if they go ahead with this project, spend the effort and time, that the credits will actually be sold at some notable price. Answer: Mr. Runyon said yes, there are risks in any venture like this. Cascade Environmental is shouldering most of that risk. They have signed a Memorandum of Agreement (MOA) with the trustees that obligate us to pay them \$50,000 because they have to recoup all of their expenses for federal government employees that are involved in this, etc. Their anticipation is that Cascade will eventually recoup that expense from the PRPs. They would not have spent the time and effort they have if they didn't think they would not be able to sell credits to the PRPs.

Mr. Runyon stated there are other upsides for the City that will come sooner than the end of the 10-year maintenance period. A number of entities including DEQ are on the record saying because you are working on restoration on the lower end of Rinearson Creek that would then help you leverage other funds including grants for upstream restoration areas. That upstream habitat influences what going on downstream in Rinearson Natural Area.

- Question: What process has been established to verify selling of these credits? Answer: Mr. Runyon noted the process is overseen by the trustees. They will establish the number of credits that will be generated from this project. The City receives the value of the stewardship and then anything beyond that would be split with Cascade in a 50/50 split.
- Question: What fund are the \$44,000 and \$10,000 coming out of? Answer: City Administrator Boyce stated they did not budget for those at the beginning of the year. What he would be looking at is using contingency funds and the general fund to cover that expense.

Mayor Byers explained this is not a public hearing; however, the Council is open to public comments from the audience.

Public Comment:

Tammy Stempel, 6960 Winfield Court stated she is an environmentalist. She puts huge value on existing green spaces and creating new green spaces for the community. The City is being asked to pay \$44,000 plus. She works for Adapt Engineering a firm that works with these types of projects and she sees everyday how \$44,000 could easily become double, triple, quadruple that amount. Environmental issues are very fluid. The City is being asked to pay for

a project they didn't ask for and not required to do. It is a project to offset pollution that happened in an area that is not ours. It is to make other people have a warm feeling about how they are helping the environment. With all the issues facing the City at this time, is Council comfortable committing to an open-ended project that is not budgeted for, that has not been on the City's forecast until fairly recently. She feels it's a great project, it needs to be restored. But she thinks that the City needs to look for options to come up with funding before committing to something that could get out of control easily. She cautioned the Council to be very thoughtful about how to proceed with this and how they commit to something that may become very large.

Councilor Busch stated he has been very close to this project for at least four year. He has worked with several people on it, homeowner's association and numerous diverse opinions about how this could be accomplished. He does not feel the City has been forced into this project in a sense that there has been a group working on this project for a long time, recognizing there could be something better than what is there. Several opportunities were explored for funding and they did get funding to do some minor things. When the opportunity came about to potentially be an interested mitigation site by the trustees, they were impressed. There is a lot of money there and as they explored the possibility they could see that this could be a very good opportunity for the City on a long-term basis. Included in this project when it is designed and ready to go there will be conservation easements set on the property which means the City of Gladstone and the property owners would have no responsibility to maintain the property forever. The Public Works Department spends many hours maintaining this site. At some point some action will have to be taken. This is an opportunity for the City to have a property that will be state-of-the-art; the trustees are providing extremely good guidance and scientific help as well as qualified people acting as consultants to take responsibility for the project. He has confidence that Cascade Environmental Group would not do this if they did not think it could be done. This is a workable situation. He has been diligent on working on the agreement to make sure that it is the best thing for the City.

Bill Dugan, 4728 SE La Cour Ct., Milwaukie stated he is president of the Robinwood Riviere Property Owners Association. He has had more experience with this pond than anyone; he has been working on this for 19 years. He was involved in the original agreement between Thomason and the City and his property association allowed the pond to exist in the first place. Thomason built the dam as mitigation for the Toyota lot. Before that it was a meadow of Canary Grass and there was nothing that could live in that area. Now a pond has been created that sustains all kinds of wildlife. It can be better; when the dam was created they didn't think about this passage and that is a big issue these days. They are willing to consider that. This is the best solution to really create a great place; not only for wildlife, a place for people to visit, but also satisfies some of the City's liabilities in terms of water quality, endangered species, fish and so forth. This is a great opportunity for the City to enhance this area that will be an asset to everyone involved.

Councilor Martinez stated she attended a meeting several years ago where both sides of this issue was discussed. Based on what she heard that night, she didn't think there could be an agreement. The fact that people have gotten together and worked out a really good solution is to their credit. She is glad to have an opportunity to do this.

Councilor Nelson moved and Councilor Busch seconded a motion to authorize the City Administrator to sign the agreement with the Rinearson Natural Area Restoration Project.

Motion carried unanimously.

Mayor Byers recessed the meeting at 8:25 p.m. and reconvened the meeting at 8:35 p.m.

7. Memo from City Attorney, State and Local Regulation of Exotic Animals. City Attorney David Doughman reported Heather Martin from their office reviewed for the City possible provisions for a Lynx that is owned by a citizen and is kept on his property. There were questions about permitting the animal, whether it is a service animal, how the state would treat it, and whether the Gladstone code would allow it.

What was learned recently was that prior to 2010 the state would have permitted the Lynx; in 2010 legislation was written that does not permit it. The state has commented that the Lynx would not be lawful under Oregon Law for this type of use. Gladstone code has a provision prohibiting this type of animal. This issue came about from an enforcement action/citation that the City gave to the property owner. The City cannot ignore what the state is saying and what they have determined in their research is the law; you can't keep the cat in this context. His recommendation is to give the owner a certain amount of time (30, 60 days) to try to find a longer-term solution that would be lawful. If that did not happen during that time other enforcement actions would resume.

Councilor members agree that this is unfortunate. The resident has had the cat for a number of years and he feels for him. It is tragic that it has to happen.

Pat Clark, 7650 Ridgewood Drive stated he is the owner of the Lynx. He has contacted the Veterans Administration (VA) and found that service animal is not the right title; companionship animal is actually the name which is verified by his psychologist. If he needs to get a PhD name on it, his psychologist will do so. He talked to the owner of the Sherwood cat place and was told that his Lynx will live to be 20 years not 26 years as previously stated. Seventeen (17) years is actually a long life for his cat. The owner stated that his cat is on borrowed time. The City Administrator can call and verify that information if needed. If he loses her and the cat dies in three months he will be very upset. If the city needs to take her that is what has to be done; however, he will be hurt as she is a family member.

City Attorney Doughman stated he doesn't know the distinction between a service animal and a companionship animal. Ultimately the question is if the state makes any distinction on that. If Council would like more information on the distinction between service and companionship animals and what the law allows, he could review those terms. Mayor Byers stated it is appropriate to get an interpretation of a companion animal from the state. City Attorney Doughman will review this issue with the distinction of a companionship animal and will get back to Council at the next meeting.

Mr. Clark stated the Sherwood place was reluctant to take his cat because of her age and was afraid she wouldn't adapt without him. He could find homes that would keep her but he is afraid she would not adapt at this point in life to new surroundings or should he euthanize her at that point.

8. Approval of Volunteer Handbook. City Administrator Boyce reported that the Assistant City Administrator has been working on the Volunteer Handbook. The Volunteer Handbook was recommended by the insurance company. Staff is recommending Council review and approval.

It was noted by Councilor Reisner that in the *Local Focus* there was an article about volunteer handbooks. He compared what was suggested be covered and what Gladstone's handbook wrote and found that the Gladstone handbook was comparable and well-done.

Councilor Martinez moved and Councilor Busch seconded a motion to approve the Volunteer Handbook as presented.

Motion carried unanimously.

9. Draft Master Fee Schedule. City Administrator Boyce reported the Master Fee Schedule was completed by the Assistant City Administrator, Jolene Morishita. The fee schedule has not been amended for several years. Research was done research on what other organizations have on their master fee schedules and compared it to where the City is currently. Staff is recommending Council review the document for comments and possible approval at next month's meeting.

Questions from Councilors:

- Question: Councilor Martinez asked about the library fee for the out-of-district card. Does this fee apply to those areas that are not part of Gladstone's library district within Clackamas County and other counties? Is it the same fee that has been charged in the past? Answer: City Administrator Boyce said yes to all three questions.
- Question: Councilor Reisner asked how the Police/Alarm Permit is administered. Answer: Assistant City Administrator reported it is something that would be brand new. It has not been determined how the Police Department will administer the permit. The Executive Assistant has indicated that she would probably be the one to do the administration (paperwork, alarm cards for homeowners, etc.). She has not spoken to the Police Chief so she does not know if this is his wishes.
- Question: Does the block party fee apply to the National Night Out. Answer: Assistant City Administrator Morishita said they are looking for Council feedback; however, her theory is the City wants to include as many neighborhoods as possible with National Night Out so she feels it would behoove the City to have Council to indicate that the fee is waived for that function.

Assistant City Manager Morishita noted she gave legal counsel a number of applications to create a process. Because of the work involved in changing the code to allow the City to administer these fees, it will be put on next month's agenda. A suggestion from the Police Department on alarm fees was given to City Attorney Heather Martin.

- Question: Is consideration being given to exempting senior citizens from initial alarm fees? Answer: Assistant City Manager Morishita said it was not indicated by the Police Department as an option, but certainly something the Council can recommend.

Mayor Byers suggested a Spell-check on Line 88 on Page 9-4.

- Question: Is the planning portion of the fee schedule not published because it is set by the County. Answer: Assistant City Administrator Morishita explained the planning

fee schedule is set by the County and City Planner Glasgow indicated that because of the fee structure and the formulas involved based on what plan or what project is being done, the cost involved in the project, and a number of other issues, he couldn't give any fee schedule that would be useful.

- Question: Councilor Martinez asked the definition of home occupation and suggested that it be changed to home business. Answer: Assistant City Administrator Morishita said it a business that is run out of the home. The term can be changed to home business and the code can be changed to reflect this.
- Question: Councilor Martinez asked where parking is available for those who purchase a parking permit. Answer: Assistant City Administrator Morishita stated there are certain areas of the City that require a parking permit (areas around the high school, parks, etc). All of the parking fees are on a yearly basis.

City Administrator Morishita noted that a member of Council requested a fee for a business license for rental property in Gladstone and she added it; Line 14, Business License for Rental Property in Gladstone. There was no objection to this addition.

It was noted that in Milwaukie the fee is \$100, much higher than Gladstone's fee. Assistant City Administrator Morishita stated it is up to Council if they want to increase that fee.

Staff was asked to review the amounts for the business license for rental property in an effort to come up with a fair amount for businesses with more than one business unit in the rental property and other fee issues brought up tonight and come back at the next meeting with suggested changes.

BUSINESS FROM THE COUNCIL

- Councilor Mersereau stated he made a few trips to the library over the last couple years and he thinks Irene Green has done a great job with her team. The interior looks better, brighter, and smells better. She has done a great job and he wanted to thank her. Before he left the last time he notices four or five exterior lights that were out and suggested the City find a way to replace those fixtures.
- Councilor Martinez reported the Council sponsored a Zombie Walk for Halloween. There were 34 participants remarkably made up in costume. The library did a great job in this event and they should be complimented.
- Councilor Martinez voiced concerns over the amount of work that the City Administrator and Assistant City Administrator have to do and how much time is spent responding to questions from the Council. She asked if there is a way to keep track of the time and work involved in questions on different issues. City Administrator Boyce stated if Council requests it, staff can do it.
- Councilor Nelson reported he was invited over the library several times but has not yet made it. He promised to visit in the near future.
- Councilor Nelson reported the Senior Center will be hosting a Turkey Dinner on Wednesday, November 20th. Volunteers are welcome to help serve. The dinner starts at 11:30 a.m. to 1:00 p.m. Santa will be coming on December 17th.
- Councilor Reisner reported he attended the emergency management training put on by the County. They did a scenario (a 6.9 earthquake in Gladstone) where they had to write up a

synopsis as to making a declaration. There are a lot of faults running along Oatfield and it is not a matter of if there will be an earthquake that big, but when. His synopsis included the complete destruction of city hall and the police station which satisfies the \$1.3 million for the County to rebuild.

- Councilor Reisner reported he attended the Clackamas County Cities event put on by Happy Valley at Camp Whitecomb. They are doing a push to rebuild the museum at the Armory.
- Councilor Reisner asked City Administrator Boyce if he was able to work out a solution with DEQ regarding overflows. City Administrator Boyce explained that after talking with the City Attorney they are not able to put the fines towards the mitigation effort. The fines are separate.
- Mayor Byers noted that in addition Herb Beals, Lucille Strobel passed away. He was unable to attend her funeral but did attend the funeral for Herb Beals. Mr. Beals and he served on the Planning Commission at the same time. He was a highly-regarded person and brought a lot of positive reflection on our community by the history books he did and his voluntary work in our community.
- Councilor Martinez suggested doing something to honor Herb Beals, possibly a Herb Beals day at the Rotary and a parade in his honor.

ADJOURN

Mayor Byers adjourned the Council Meeting at 9:25 p.m.

The next City Council meeting was adjourned to December 10, 2013, at 7:30 p.m.

Approved by the Mayor this 10 day of December, 2013.



Mayor

Attest:



Assistant City Administrator