

A regular meeting of the Astoria Common Council was held at the above place at the hour of 7:00 p.m.

Councilors Present: Herzig, Warr, Mellin, Mayor Van Dusen

Councilors Excused: LaMear

Staff Present: City Manager Benoit, Police Chief Curzon, Parks and Recreation Director Cosby, Finance Director Carlson, Fire Chief Ames, Planner Johnson, City Attorney Henningsgaard, and Public Works Director Cook. The meeting is recorded and will be transcribed by ABC Transcription Services, Inc.

#### **REPORTS OF COUNCILORS:**

**Item 3(a): Councilor Warr** reported that he attended the Transportation System Plan meeting on Wednesday, October 16<sup>th</sup>. A plan will be presented to City Council for approval in January 2014.

**Item 3(b): Councilor Mellin** reported that she attended the Snapshot of the Regional Economy on Thursday, October 17<sup>th</sup> at Clatsop Community Hospital's Community Center. Discussions centered on how the local economy has managed over the years with a population of 10,000 people. She learned that the hospital employs 500 people who bring between \$1 and \$8 million into the community. The hospital's expansion of services has saved patients \$2 million in gas, as they no longer have to drive to Portland. She stated that she also helped Director Cosby interview the four candidates for the position of landscape architect/gardener.

**Item 3(c): Councilor Herzig** reported that the Diversity Project hosted Senator Elizabeth Steiner-Hayward, who spoke about her struggles with depression and discussion focused on how the stigma attached to mental illness prevents many people from seeking treatment. On October 20<sup>th</sup>, Senator Betsy Johnson and Seaside Police Chief Robert Gross participated in a panel discussion in Seaside on reaching out to people who are isolated for personal, emotional, financial reasons, etc. The community needs to help those who fall through the cracks and make sure there is no stigma attached to being in need.

**Item 3(d): Mayor Van Dusen** reported that he was on the US Coast Guard Buoy Tender. The crew appreciated the Astoria Fire Department and the Memorandum of Understanding written by Chief Ames. A drill on the ship will be conducted soon. To recognize October as Breast Cancer Awareness Month, the Column was lit with pink lights on Friday, October 18<sup>th</sup>. Mammographers at Columbia Memorial Hospital developed the idea for the lighting event. He reviewed several photographs of the event that were displayed. He commended the Parks Department for a job well done.

**CHANGES TO AGENDA:** There were no changes to the agenda.

#### **PRESENTATIONS:**

##### **Item 5(a): City/County Insurance Services**

CIS representatives briefed the City Council regarding the City's response to the September 5, 2013 accident involving Public Works Senior Utility Worker Ole Gifford.

Mayor Van Dusen stated this is going to be a good meeting because Carl "Ole" Gifford, who had been involved in a dangerous incident, is able to attend.

John Zakariassen, Senior Risk Management Consultant, City/County Insurance Services, explained that the company provides the City with property, liability, auto liability, auto physical damage, and workers compensation coverage. The company rarely makes presentations, but this is an extraordinary situation. On September 4, 2013, City employee Ole Gifford suffered a near tragic injury. He commended the immediate response of Mr. Gifford's co-workers, the emergency dispatcher, and the first responders, noting that incident was not handled well because of happenstance or luck; the City has done a lot of training. Was it not for City Manager Benoit's

commitment to training his employees, Mr. Gifford may not be here. Mr. Zakariassen commended City Manager Benoit, whose commitment filtered down to Director Cook, Chief Curzon, and Chief Ames. These department heads have the authority to train correctly and often, and this training has saved a life.

Susan Lavier, Workers Compensation Manager, City/County Insurance Services, reiterated that this commendation is a rare occurrence. In the 17 years she has been processing workers compensation claims for CIS, this is the first award that has ever been awarded by the Workers Compensation Department. When the incident occurred, Director Carlson immediately called CIS to report the serious injury and comply with Occupational Safety and Health Administration (OSHA) requirements. CIS Senior Adjuster, Patty Snow immediately assigned a nurse case manager, who oversaw the care to ensure proper care. This case manager noticed that everyone involved, from the trauma nurse to the surgeon, did exactly what needed to be done, when it needed to be done. The case manager also noted that in 30 years, this incident was one of only two miracles she has ever seen. Ms. Lavier said it was her honor to present Awards of Valor to the following people: Chuck Higgins, Brett Stevens, Brooke Brendan, Bob Johnson, Mark Truax, Tom Jaworski, Beau Santjer, Levi Hammond and Summer Bartlett. She added that Ms. Bartlett was listening to dispatch and acted prior to receiving the 911 call to expedite services.

Carl "Ole" Gifford thanked everyone who was involved in his care, noting that he should not have survived.

Mayor Van Dusen noted that the medics, who were not in attendance, were also an important part of the team.

Mayor Van Dusen announced that Summer Bartlett was awarded Telecommunicator of the Year, which is the only award given to a telecommunicator by the State of Oregon. Ms. Bartlett earned this recognition prior to the incident involving Mr. Gifford. This award recognized the person who demonstrates the highest level of commitment to the profession through dedication to continuous improvement, initiative, professional development, care of customers, investment in the team, promotion of the telecommunicator code of ethics, leadership by example, and who, by act or deed, makes an exceptionally noteworthy contribution, thus positively impacting the telecommunicators. She began working for the City 2008 as a temporary communications operator and began working full time in 2011.

#### **CONSENT CALENDAR:**

The following items were presented on the Consent Calendar:

6(a) City Council Minutes 9/24/13

6(b) Fiscal Year 2013-14 Dispatch Services Agreements (Police)

**City Council Action:** Motion made by Councilor Warr, seconded by Councilor Mellin, to approve the Consent Calendar. Motion carried unanimously. Ayes: Councilors Warr, Herzig, Mellin and Mayor Van Dusen; Nays: None.

#### **REGULAR AGENDA ITEMS**

**Item 7(a): Resolutions Adopting Astoria Senior Center Community Development Block Grant Section 3 and Limited English Proficiency Plans (Community Development)**

In March 2013, the City Council accepted a Community Development Block Grant (CDBG) for renovation of the Astoria Senior Center. As the Housing and Urban Development (HUD) program provides funding for Oregon's CDBG projects, certain Federal requirements must be complied with in order to the use of the funds. Two of these requirements include adoption of the following two plans:

- Section 3 Plan, which describes how the City will make a good faith effort to ensure all contractors working on HUD-funding CDBG projects provide equal employment opportunity for all employees and applicants for employment, and that reasonable efforts are made to fill all training positions with local residents.
- Limited English Proficiency (LEP) Plan, which describes how the City makes a reasonable effort to ensure residents with limited English are made aware of and can access City programs and services.

Attached to this memorandum are the two above mentioned plans and accompanying resolutions, which have been reviewed and preliminarily approved by Oregon's CDBG management staff. City Attorney Blair Henningsgaard has reviewed and approved both Plans as to form. It is recommended that Council adopt the two attached resolutions, by separate motions, for the Section 3 Plan and Limited English Proficiency Plan associated with the Astoria Senior Center Community Development Block Grant.

Councilor Herzig noted that in order to receive the fund, federal regulations had to be followed, which included providing language services to limited English proficiency people and make a good faith effort that all contractors working on the project provide equal employment opportunity, particularly for low income people. It is a complex process and he was unsure all the guidelines could be met.

Mary McArthur, Columbia Pacific Economic Development District, 100 E Street, St. Helens, responded that the Limited English Proficiency Plan is a written form of what the Senior Center is already doing. There is no question that the requirements of this Plan can be met. The Section 3 Plan is a little more complicated, but she believed the contractors working on the project have been making a good effort to obtain employment locally. Technically, the regulation regarded only new hires, so if local contractors are used, the new hires may or may not be low income, but hopefully they would be. Both plans meet State requirements.

Councilor Warr noted a typographical error in the third paragraph of A.3. on Page 6 of the LEP Plan needed to be corrected.

**City Council Action:** Motion made by Councilor Mellin, seconded by Councilor Warr to adopt the Section 3 Plan associated with the Astoria Senior Center Community Development Block Grant. Motion carried unanimously. Ayes: Councilors Warr, Herzig, Mellin and Mayor Van Dusen; Nays: None.

**City Council Action:** Motion made by Councilor Herzig, seconded by Councilor Mellin to adopt the Limited English Proficiency Plan associated with the Astoria Senior Center Community Development Block Grant. Motion carried unanimously. Ayes: Councilors Warr, Herzig, Mellin and Mayor Van Dusen; Nays: None.

**Item 7(b): Public Hearing – Ordinance regarding Development Code Amendment (A13-04) Concerning Solar Energy (1st reading) (Community Development)**

In 2010, due to increased interest in locating renewable energy facilities in Astoria, the City began work on a draft ordinance to establish standards for wind and solar energy facilities within the City. Due to the nature of the technology and the differences in wind and solar energy, the Astoria Planning Commission (APC) determined that the two issues should be separated and that they would complete the solar energy ordinance first as it was not as complex as the wind energy ordinance. Over the last two years, the APC, Historic Landmarks Commission (HLC), and City Council have held several work sessions concerning the draft Solar Energy Ordinance. The intent was to develop a code that would make the process easy, comply with State regulations, and address historic concerns. The draft addresses issues raised by the APC, HLC, and citizens who have responded to the draft documents over the last three years. There are several sections with notations by staff that are *{italicized and bracketed}* that are included to explain the intent of that particular section of the draft. These will be removed from the final document.

In addition to the creation of the Solar Ordinance, there are several amendments to Article 9, Administrative Procedures for all permits, to address procedures for processing a solar permit. Only requirements unique to solar facilities are included in the Solar Ordinance. Amendments to Article 6, Historic Properties Ordinance, which reference the Solar Ordinance historic design review are also proposed with this amendment. The HLC held a work session at its August 12, 2013 meeting and accepted the draft as presented.

At its September 24, 2013 meeting, the Astoria Planning Commission held a public hearing and unanimously recommended that the City Council adopt the proposed amendment. A copy of the Staff Report and Findings of Fact as adopted by the Planning Commission is attached. Also attached to the memo is the proposed ordinance. A public hearing on the Amendment has been advertised and is scheduled for the October 21, 2013 City Council meeting. It is recommended that the Council hold a public hearing and adopt the ordinance as recommended by the Astoria Planning Commission. If the Council is in agreement with the recommendation of the Astoria Planning Commission, it would be in order for Council to hold a first reading of the Ordinance.

Councilor Herzig noted an incredible amount of work has gone into this ordinance. He asked why only one solar facility would be allowed on a site less than one acre in size. Planner Johnson explained the intent was to prevent solar farms on residential properties. Larger facilities are allowed on larger parcels of property. She confirmed that a property owner could ask for a variance should they want more than one facility. Councilor Herzig asked if weight concerns led to the regulation that solar powered hot water heaters could take up no more than 25 percent of the roof area. Planner Johnson explained that larger hot water heaters are allowed, but would require the next level of review by the Planning Commission. Smaller heaters would be approved through administrative review. She clarified that freestanding facilities on residential structures may not exceed six feet in height from the ground to the top of the facility, which is the same height as a residential fence. Councilor Herzig suggested the language be changed to indicate the maximum height is six feet from the ground, not from a structure. Planner Johnson clarified that a structure does not have to be dwelling, but could be a concrete foundation.

Councilor Warr noted that on the larger installations, which require 6-foot high fences that could not be scaled. Another section of the ordinance stated that barbed wire, constant wire, and electric fencing are not permitted. He asked what types of non-scalable devices would be permitted, noting that it is fairly easy to climb over a 6-foot fence. Planner Johnson explained the intent was to prevent, deter or discourage people from scaling the fences; a chain link fence with slats would be one example. Councilor Warr also referred to the requirement that fencing be hidden from view with landscaping and evergreens. He pointed out that 15 years from now, the evergreens tall enough to hide a 6-foot tall fence would block the sun required by the solar panels. Planner Johnson replied that evergreens, such as laurels and various evergreen shrubs could screen the fences from view, as the Code does not specifically require evergreen trees.

Mayor Van Dusen asked if anyone objected to the jurisdiction of the City Council to hear this matter at this time. There were no objections. He asked if any member of the City Council had any conflicts of interest or ex parte contacts to declare. Mayor Van Dusen opened the public hearing at 7:33 p.m. and called for anyone wanting to speak in favor of, impartial to, or against the solar power ordinance to come forward.

Sarah Bardy, 1413 Lexington, Astoria, understood that solar panels could not be above six feet off of the ground. Planner Johnson explained there were three levels of review for solar panels. One level would be reviewed over the counter by staff with no public review, the second would be over the counter by staff with public review, and the third would be a review by the Planning Commission. Freestanding solar panels taller than six feet are allowed, but will require review by the Planning Commission. Roof mounted solar panels also have various levels of review, depending on their size. The smaller facilities undergo a more simple review process, while the more complicated facilities would require review by the Planning Commission.

Ms. Bardy asked if the simple solar facilities were limited to one per household. Planner Johnson said that multiple panels are allowed on a single roof because it would be considered one facility.

Theodore Thomas, 398 Atlantic, Astoria, said he has been talking to his friends and solar enthusiasts about this ordinance. He attended a meeting about the solar ordinance in 2010, where people expressed concern about additional burdens on landowners with regard to the use of personal property as an impediment towards the goal of increased use of renewal energy. Power in Astoria currently comes either from Beavercreek Natural Gas or from the anthracite coal-powered plant in Centralia, both of which produce a lot of carbon dioxide. Some people asked Mr. Thomas to ask the City to do everything under its authority and jurisdiction to promote the installation and use of solar power in the interest of promoting renewable energy.

Mayor Van Dusen asked Mr. Thomas to state for the record the names of the people he was speaking for. Mr. Thomas replied his friends were Douglas Kess of Naselle, WA and Chris Patton from the local area, both asked him to speak.

Mayor Van Dusen closed the public hearing at 7:37 p.m. and called for Council deliberation and discussion.

Councilor Herzig stated the ordinance was necessary because Astoria must have a solar power ordinance. The ordinance is complicated because it includes variances and many steps. He asked if staff could walk property owners through the process. Planner Johnson explained that staff is available for applications for any permit. Applications make requirements clear and staff will be available to help.

Councilor Herzig said that staff has put a lot of work into creating a program that is as simple as possible. The process will actually facilitate more solar panel installations and will not be an impediment. He asked if existing solar installations would be grandfathered in. Planner Johnson said some of the existing installations have already been reviewed, like the Wet Dog Café and the college. Any existing installations that were not reviewed would be grandfathered and would not be required to obtain additional permits.

**City Council Action:** Motion made by Councilor Warr, seconded by Councilor Mellin to conduct the First Reading of the Ordinance regarding Development Code Amendment (A13-04) Concerning Solar Energy. Motion carried unanimously. Ayes: Councilors Warr, Herzig, Mellin and Mayor Van Dusen; Nays: None.

Planner Johnson conducted the first reading of the Ordinance regarding Development Code Amendment (A13-04) concerning Solar Energy.

**Item 7(c): Authorization to Bid – Williamsport Road and Highway 202 Water Main Project (Public Works)**

Over the past 12 years the City has made multiple repairs to a portion of six-inch water line adjacent to Highway 202 between Williamsport Road and Cedar Bay Road. The cast iron water pipe in this section has significantly deteriorated resulting in frequent water leaks. HLB Otak has designed a waterline to replace the deteriorated utility. The project will include installation of 600 feet of eight-inch PVC water line, two new fire hydrants, and other associated water appurtenances. It has been determined that replacing the pipe in-place would be the most cost effective approach. The construction estimate for this project is \$92,500, which includes a 10% contingency. It is recommended that Council authorize staff to solicit quotes for the Williamsport Road and Highway 202 Water Main Project. Funds for this project are available in the Public Works Improvement Fund.

Mayor Van Dusen confirmed there was no public comment regarding the water line or proposal.

**City Council Action:** Motion made by Councilor Warr, seconded by Councilor Mellin to authorize staff to solicit quotes for the Williamsport Road and Highway 202 Water Main Project. Motion carried unanimously. Ayes: Councilors Warr, Herzig, Mellin and Mayor Van Dusen; Nays: None.

**Item 7(d): Scheduling Public Hearing regarding Sale of Excess City Property (Public Works)**

At the August 17, 2013 meeting, the City Council authorized the Mayor to sign a contract with Area Properties to market excess properties throughout the City. It was proposed that the realtors would bring the offers to the City Council as offers were made so that Councilors could evaluate the potential sales prior to the public hearing. Area Properties realtors have been contacting the adjacent owners of selected properties to offer them the right of first refusal prior to marketing to the general public. It should be noted that the time requested for a response from adjacent owners has been extended an additional two weeks. To date, offers have been made for the following properties:

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|--------------------------------|--|
| 1. 900 Block of 36th           | Map T8N-R9W Section 9DB, Tax Lot 8900  |
| 2. 4900 Block of Birch, West   | Map T8N-R9W Section 10AB, Tax Lot 3200 |
| 3. 4700 Block of Ash           | Map T8N-R9W Section 10BA, Tax Lot 1300 |
| 4. 1840 4th Street             | Map T8N-R9W Section 18DA, Tax Lot 6500 |
| 5. 4600 Block of Birch and Ash | Map T8N-R9W Section 10BA, Tax Lot 1800 |
| 6. 5300 Block of Alder         | Map T8N-R9W Section 10AA, Tax Lot 900  |

It is recommended that Council direct the City Manager to schedule a public hearing for the November 4, 2013 Council meeting and prepare a report in accordance with City Code 1.500 to 1.510. After the public hearing, the City Council may agree to sell any or all of the parcels.

City Manager Benoit noted that the offer to purchase the 4900 Block of Birch, Tax Lot 3200, has been withdrawn.

Jan Faber, 3015 Harrison Avenue, Astoria, said he lived adjacent to the 2900 block of Irving and Harrison. When he received a notice about this property, he contacted Area Properties and Planner Johnson, who were friendly and helpful, but the information provided was confusing as they said they were not sure what was happening. He believed the procedure had either not been formalized or had not been communicated well to the adjacent property owners. He received the notice on Saturday, October 12, 2013, and a bid was to be received before Wednesday, October 16, 2013, leaving him only two days to submit a bid, but he was unable to clarify which lots were for sale or whether he would have to buy the entire parcel. He was told that some, and possibly all, of the property was unnotable, making it difficult for a bidder to know what they are bidding on. He submitted a bid to protect his rights and has assumed that the property is.

City Manager Benoit clarified that the property Mr. Faber has submitted a bid for has not been included in this agenda item. Planner Johnson explained staff was still researching the water lines that run through the property and so it is not part of this proposed public hearing.

City Manager Benoit stated Mr. Faber was correct that the process was still being worked out. Area Properties has contacted many adjacent property owners in Astoria to inquire about their interest in purchasing properties. Any property, ready to be sold, for which the City has an offer, will be added to the City Council agenda. The agenda packet will include aerial photographs and site plans of each parcel. City Council is asked to consider scheduling a public hearing to consider the offers to purchase each property. Currently, the City has five offers on properties that are ready to be sold. The property at 2900 Irving and Harrison is not ready for sale and is not one of the five on the agenda. He understood that property owners believed purchase offers had to be made quickly as there is short timeline to adhere to. Staff will correct this and give property owners more time to make a decision. The City needs to make it clear to property owners that this process provides an opportunity to consider making an offer. City Council, through a public process, can choose to keep a property instead of selling it. The City has hundreds of parcels, so staff is only presenting the properties that have interested buyers.

Mr. Faber said he was led to believe that the bids would be presented to Council, who would decide on the bid winner without the low bidder having a chance to rebid. He was unsure how the bidding process would work. City Manager Benoit responded that City Council can direct staff to modify the current process, which staff is working to improve. At this time, Area Properties is contacting adjacent property owners prior to placing parcels on the multiple listing service or being advertised for sale. This gives adjacent property owners the first opportunity to purchase the parcels. The City intends to work with those property owners on offers and counter offers and then submit only good bona fide offers to City Council for consideration to prevent a bidding war at a City Council meeting. That bidding process would be handled by Area Properties.

Mayor Van Dusen asked staff to explain the process using a hypothetical, surplus City lot. He confirmed that first, only the property owners surrounding a surplus City lot would be notified the lot is for sale, and if a fair offer is made, Council would decide whether to accept that offer. He asked if non-adjacent property owners would be informed that an offer had been made on a lot and presented to City Council for consideration. City Manager Benoit explained the City has the right to sell its property to an adjacent property owner for a fair price. Hypothetically, if a fair offer is received from an adjacent property owner, the City Council could accept the offer and award the property to that owner without opening up or advertising that the property is for sale to the general public. He confirmed a public hearing would be held before City Council where Council could reject the offer or decide not to sell a property. The public hearing would allow for public input and the City Council could consider whether to reject an offer if the public makes a good case against selling a property.

Mayor Van Dusen asked if the Council could accept a higher bid if one is received at the public hearing. City Attorney Henningsgaard answered yes, the public hearing allows City Council to make any decision. There is no requirement that a property must be sold to a particular individual or to conduct an auction. He confirmed that City Council could accept the original bid, accept a higher bid, or choose not to sell a property at all, based on the results of the public hearing.

Mr. Faber stated he was unaware that specific parcels were on the agenda and asked where to find this information. City Manager Benoit said the agenda packet, which would list the specific properties, is made available on the City's website.

Mayor Van Dusen noted this was the first time the City has done this, and agreed Mr. Faber made some great points; the City is working to improve the process. The City is trying to get the word out about these properties.

Judith Stokes, 4931 Cedar, Astoria, asked if the property at 4900 Birch would be discussed at this meeting. City Manager Benoit replied that property was not being considered because the offer had been withdrawn. The City will only consider setting a public hearing for properties that have an offer.

Beth Kandoll, 2749 Grand Avenue, Astoria, asked if a parcel near her was being discussed at this meeting. City Manager Benoit displayed a photograph of the parcel for sale on the 900 block of 36<sup>th</sup> at Irving.

Bernie Wood, 3629 Irving Avenue, Astoria, used the photograph to show the location of his house. He noted the hill behind his house, adding there is a catch basin where Public Works had dug a hole two or three years ago. Since then, water has been leaking more visibly. A crew recently visited the site and marked the property, but no work has been done. He showed a photograph of his property that was taken before he owned it, explaining that the derelict car in the photo has been removed.

City Manager Benoit continued showing photographs of each property, describing their locations and any particular features. He clarified that the sewer pump station was located on a parcel adjacent to the property at 4600 block of Birch and Ash Streets near the Alderbrook Lagoon.

Councilor Mellin said that locating the parcels is difficult while driving around town because they are hidden behind objects. City Manager Benoit noted the colored aerial photos and information were included in the agenda packet to make it easy for Council members to visit properties. In some cases, the properties are difficult to find. Some of the properties are buildable, some would simply provide access, but portions of some properties are in the flood zone. Many of the properties are remnant parcels that would just serve as an addition to a yard. All the properties are considered useful to adjacent property owners or some aspect of the property is buildable.

Councilor Herzig clarified that this agenda item is not the public hearing for these properties. Offers on these properties will be examined by City Council, then a public hearing will be scheduled. No one will be blindsided and adjacent property owners will be notified of the public hearing. This agenda item indicates that City Council is obligated to schedule a public hearing about the properties listed on the agenda because offers have been made.

Beth Kandoll, 2749 Grand Avenue, Astoria, stated she was concerned that many of the properties were located in a flood zone or between landslide areas. Adjacent property owners are being told suggested prices for land that is not buildable, so it is difficult for adjacent property owners to make an offer. She asked if the entire parcel must be purchased or could just a couple lots be purchased so adjacent owners could protect their land. The process is confusing. She understood the City may need additional tax revenue from the parcels but asked if a clause could be included in the sales contract stating that the parcel can never be built upon. Property owners were told in 1989 that certain parcels were on landslide property and not buildable. Now, property owners are being told that geotechnical surveys indicate these parcels are potentially buildable. She would like to make a small offer, contingent upon never allowing the property to be built on, similar to a land conservancy offer.

Mr. Faber agreed adding that his new neighbor made an offer on a City lot, and he and his neighbor have a gentleman's agreement regarding that property adjacent to work out details. He did not understand why the property for sale could not be divided among the four adjacent property owners and it must be sold as one parcel to one property owner. The land adjacent to his property is very wet and may slide. He and his neighbor feel threatened because they do not know what will happen if the sale of City property is publicized. Someone outside the local area may purchase the property with the intention of building on it. He believed the property owners were being coerced into acting defensively to protect their properties. He appreciated the City wanting to sell unused land to increase the tax revenue, but was concerned that property owners are given little time to consider making an offer before the property is made available for sale publicly. This is not a good way to do business with citizens who have been working to improve their properties and paying taxes.

Councilor Herzig noted the staff report stated the property at the 900 block of 36<sup>th</sup> Street is located in a known geological hazard area. He was concerned that some of the properties for sale could endanger the neighborhood and adjacent property owners if built upon. He and Mayor Van Dusen received phone calls about the short time period given to adjacent property owners to submit a bid before open the bid process to the public. Some property owners were panicked and believed their properties would be jeopardized if an adjacent lot were built on. The letter to property owners should be sent out at least two weeks prior to the property being publicly listed and should specify that a public hearing would be scheduled after any offer is made. The letter should also explain that City Council had the authority to reject an offer at the public hearing. Property owners should not feel coerced into protecting their properties by making an offer on a large piece of land that could possibly be divided. He noted this is a new process for the City and some corrections to the process are necessary. He reiterated that the letter should give property owners more time to submit an offer, guarantee a public hearing, and offer the flexibility to purchase a portion of a lot that is for sale.

Mr. Faber said the properties adjacent to him would require a geotechnical survey prior to being built on because they were within 100 feet of a known geologic hazard. He understood he would be bidding on property in questionable condition and wanted to know who would conduct the survey. He was told that the City had no reason to obtain a geotechnical report unless a bid was received. However, he would not want to bid on a property that may not be subject to sale. Some of the lots on the piece designated for sale are already in a hazard zone and part of the lots need to be studied through a geotechnical survey. He believed the City should accept bids after the geotechnical survey has been completed.

City Manager Benoit explained that normally a geotechnical report is not done until specific plans exist for the use of the property because the report is based on these plans. Mayor Van Dusen added the report would not simply state that a property was buildable or not buildable. For example, prefabricated homes can be built on lots that cannot accommodate a stick built home. He suggested adjacent property owners submit a contingent offer with stipulations about the use of the lot. City Manager Benoit explained City Code states any property within 100 feet of a known landslide area will require a geotechnical report prior to being developed. Because of the landslide history in Astoria, the city has been mapped and there are parcels that are very stable, but are within 100 feet of a landslide area.

Mayor Van Dusen asked how the current process was developed. City Manager Benoit said staff consulted with Area Properties to develop a process that was approved by City Council. Mayor Van Dusen said the process is confusing, although the City's intentions are good. The City wants to offer its excess property to its citizens, and wants people to build in Astoria. Staff has done a lot of work, but the process must be restructured.

Councilor Warr agreed the process was a bit confusing. He did not believe the City could guarantee the allowable uses of any property. If property owners want to make very low offers to protect their interests or because they feel threatened, perhaps those should be discussed, but he did not believe most of the parcels would be that complicated to sell. The process should be finalized prior to scheduling public hearings.

Mr. Wood asked how binding is it if a property is deemed unbuildable, noting that in 10 or 15 years a new Council may offer it for sale. Mayor Van Dusen replied that was a major question, and added that rumors and inaccurate information can lead to confusion about the ability to build on a piece of land. City Attorney Henningsgaard clarified that future City Council members could allow the property to be developed.

Councilor Herzig asked that the process be re-examined and restructured because the current process has caused at least one individual serious distress. Many property owners had an unsettled weekend as they attempted to find answers to a variety of questions. The City has good intentions, but must consider the impact of the current process and make improvements.

Laurie Duey, Area Properties, 1490 Commercial Street, Suite 100, Astoria, said that coordinating with the City to sell real estate can be challenging. Area Properties was tasked with notifying adjacent property owners that properties would be made available for sale. The letters did not necessarily mean that property owners had a set time to respond, and the timeline for the response time was extended. She noted that many responses were received as a result of the short deadline. Those offers were accepted and the normal negotiation process began. She administered negotiations between the City and property owners, and some counter offers were involved. There was no point asking City Council to approve the sale of a property until an offer has been made,



which is why the five out of 44 properties are on the agenda. Offers have been made on partial properties and three property owners have expressed interest in the property on 36<sup>th</sup> Street. Contingencies on offers are subject to review by the City Attorney, a public hearing, and City Council approval. Offers accepted by City staff may still be rejected or renegotiated during another part of the process. A lot of things occur between this first step and the actual sale, where the legal aspect of selling property starts. Determining the best process was difficult and the decision was to try something different than an auction. The City is not ready to make a decision on the parcel on 36<sup>th</sup> at Irving which is still being investigated. The City is definitely not selling slide property, but a smaller portion than she discussed with Mr. Wood would be for sale.

Mr. Faber asked if he would be informed of other offers made on a property he offered to purchase. Ms. Duey responded that while she could not tell him the details of the other offers, he would be given an opportunity to make his highest and best offer. Mr. Faber replied that is what he did not understand. In a normal real estate transaction, he would be told the amount of the other offers. Mayor Van Dusen explained that the City is not selling its properties at an auction where potential buyers know the current bid.

Ms. Duey further explained she is not allowed to disclose the details of offers to other potential buyers. She could say that multiple offers have been made and would encourage each potential buyer to make their highest and best offer. She would not discourage anyone from making any offer, no matter how low. The decision is not hers; she writes the offer and presents it to City staff. Ultimately, City Council decides if the property will be offered for sale. Area Properties has provided a recommended list price for each property. Some offers have been higher than the recommended list price while others have been lower. All the offers would be discussed at the public hearing.

A question was raised as to whether offers could be made on two of the six parcels. Ms. Duey responded that offers could be made on a portion of any of the parcels.

Mr. Wood asked how the recommended list prices were developed. He noted one property was listed at \$26,000, but the letter seemed to suggest that the price included lots that could not be sold. Bidding on a site even though part of it cannot be sold is confusing. Ms. Duey stated that details regarding that particular property would be clarified to those who make an offer. The City does not sell property in a slide zone and this was not made clear in the letter. Only the section of the lot outside of the slide zone should have been offered for sale, which would have resulted in lower recommended list price.

Councilor Herzig clarified that the City is not required to sell the properties. A goal of the City Council is to generate income for the City and add some properties to the tax register. He did not want citizens to feel pressured to make an offer. The City is not trying to scare property owners into making offers because they fear the properties will be pulled out from under them. He wanted the City to be fair, honest, and generous with the process because City-owned property belongs to the citizens. This property should not be held hostage in order to generate more income from people who technically already own the property in a way. He was not happy to hear the feedback given by the adjacent property owners regarding the confusing nature of the bidding process. He wanted to make sure that property owners come first in this process. Ms. Duey assured that forcing property owners into purchasing property was not the intention whatsoever. The intent was to provide property owners with an opportunity to have first choice on the properties being considered for sale, which she appreciated when she purchased City-owned property. The timeframe has been extended and the list of available properties has only been made available to adjacent property owners, which was a good gesture by the City. Most all the property owners appreciated the opportunity to purchase the properties, whether they made an offer or not. The process will not be rushed and may be modified. Some offers may be renegotiated and there is no concern that property owners are being rushed. Properties will not be put on the market until offers have been resolved through a public hearing. This is a benefit for the adjacent property owners because they will have full opportunity to close on the properties before the properties are listed on the multiple listing service.

Councilor Mellin asked if there was any objection to holding a public hearing on November 4, 2013 to discuss offers made on the five properties listed in the agenda. She recommended the public hearing be scheduled. Ms. Duey confirmed that properties do not go to public hearing until a bona fide exists, such as the five properties on tonight's agenda. She noted that offers have been received on three additional properties, which will also be presented to City Council at the next meeting to be considered for public review at the following meeting. Councilor Mellin understood the plan was to work through the process of selling the properties a few at

a time. Ms. Duey said reviewing all 44 properties at one City Council meeting would be impossible. It is difficult enough to drive around town and locate each property.

Mr. Farber asked if the adjacent property owners would be notified when a property is scheduled for public hearing before Council. City Manager Benoit replied if City Council chooses to schedule a public hearing, the City is required to mail legal notices to property owners within 200 or 250 feet of the property being considered for sale.

Councilor Herzig added that future letters will not be sent out on a Friday or a Saturday with a listing Wednesday. Adjacent property owners will be given more time to respond. Letters will be written to include the public hearing and extend the offer timeline. Ms. Duey responded that Area Properties would change the letters. The letters were mailed out on Wednesday and some were returned. Councilor Herzig noted this was another reason for a longer timeframe.

Mayor Van Dusen stated that he intended to vote against scheduling the public hearing. He was in favor of selling City property and believed Area Properties did a good job, but he did not feel comfortable scheduling a public hearing at this time. He was just as confused about the process over the weekend as the property owners.

**City Council Action:** Motion made by Councilor Mellin, seconded by Councilor Warr to direct the City Manager to schedule a public hearing for the November 4, 2013 Council meeting and prepare a report in accordance with City Code 1.500 to 1.510. After the public hearing, the City Council may agree to sell any or all of the parcels. Motion denied 2 to 2. Ayes: Councilors Warr and Mellin; Nays: Councilor Herzig and Mayor Van Dusen.

Mayor Van Dusen stated that while the motion failed, the process has not. Councilor LaMear will return and he would be willing to proceed with the process if staff can develop a clearer explanation. He did not blame staff or Area Properties, but did not feel comfortable with the process.

Ms. Duey asked if the Dubb house located at 1840 4<sup>th</sup> Street could go to public hearing. It is a listed City-owned property that has been included in the agenda. Mayor Van Dusen explained that this property was purchased by the City after being damaged during the Combined Sewer Overflow (CSO) work and the City has intended to sell it all along.

**City Council Action:** Motion made by Mayor Van Dusen, seconded by Councilor Mellin to direct the City Manager to schedule a public hearing for the November 4, 2013 Council meeting to consider the sale of 1840 4<sup>th</sup> Street. Motion carried unanimously. Ayes: Councilors Warr, Herzig, Mellin and Mayor Van Dusen; Nays: None.

Councilor Warr asked how the City should move forward. Mayor Van Dusen responded that was the City Manager's decision.

City Manager Benoit stated that the public hearing on the sale of 1840 4<sup>th</sup> Street would be conducted at the City Council meeting on November 4, 2013. In the meantime, staff will work with Area Properties to more clearly outline the process of selling excess City-owned property. That outline will be presented to City Council for review. Once City Council has approved a process, staff will move forward.

Councilor Warr believed holding a public hearing on some of the properties would be a good learning experience. City Council decides whether or not to sell a property. He voted to schedule the public hearing because City Council would still have the option to decide not to sell a property after the hearing.

Mayor Van Dusen said he just did not understand the process. The process may be very good and Ms. Duey did a good job getting the word out about the properties. However, he had several questions and needs to understand the process better. He did not believe he would be doing a job if he moved forward without understanding it. There may be nothing wrong with the urgency factor, but he did not believe City Council wanted to create this sense of urgency. He may vote in favor of this proposal in the future.

Ms. Duey asked if Area Properties needed to notify property owners by mail that the procedure was changed. Mayor Van Dusen replied the procedure had not changed yet; City Council just denied the motion to schedule a public hearing. Property owners will be notified if changes are made. Ms. Duey said she could easily notify

property owners who have made offers, but wanted to know if notifications needed to be sent to property owners who received letters listing that the lots would be for sale. Mayor Van Dusen did not believe this was an issue and reiterated that no public hearing would be scheduled for the properties that have offers. Adjacent property owners would need to be notified if City Council decided not to sell any of the properties. However, this was not why Mayor Van Dusen and Councilor Herzig voted against scheduling the public hearing.

Councilor Warr believed Ms. Duey was concerned about all of the people involved in the process and being unable to tell them what the next steps will be. Property owners have made offers and are considering offers, but City Council stopped the process without any alternative.

Mr. Wood suggested property owners be told the truth, which is that the process is being modified and property owners would be notified when the issues are resolved. It would not be too difficult to print out 200 form letters, though part of the problem was failing to consider the location of a property or if a lot was buildable or not.

Mayor Van Dusen reiterated that, personally, he is not ready to schedule a public hearing for the properties that received offers.

Mr. Faber stated he never received a letter stating a public hearing had been scheduled for November 4, 2013. Councilor Warr stated that was because his property was not included on the agenda. Ms. Duey clarified that after the letters were sent out and AREA Properties realized how concerned the property owners were, those who contacted Area Properties to inquire about the properties were contacted via phone and email and told that a public hearing may be scheduled after the second City Council meeting.

Councilor Herzig believed staff and City Council was experiencing a disconnect. Staff has made arrangements in good faith and City Council has decided not to schedule the public hearing. Apparently, Area Properties was notifying property owners that there would be a public hearing in November. Ms. Duey clarified property owners were notified that the properties with offers would be presented to City Council tonight, and then the list of properties would be made public at the next Council meeting. The letter did not say any agreements would be made, but that there would be that timeframe before the properties would be publicly listed for sale. Councilor Herzig stated he was more confused now than he had been and reiterated that staff needs to work with the realtor to sort out the process. City Manager Benoit stated that is staff's next step which will be completed as soon as possible. Staff will meet with Area Properties and write a process in clear English to be presented to City Council for consideration.

Mayor Van Dusen said he was responsible for part of the problems with this process. He apologized for failing to work harder to understand the procedures.

**Item 7(e): Public Hearing on Findings to Exempt a Contract from the Competitive Solicitation Requirements and Award Contract Associated with Maritime Museum Memorial (Parks)**

On Saturday, September 28, 2013, five granite panels from the Maritime Memorial wall detached and shattered during a large downpour and strong wind gusts. The Parks Department is proposing to have replacement granite and engravings installed by Astoria Granite Works for a total cost of \$21,328. Staff is proposing an exemption from the competitive solicitation requirement and awarding contract to Astoria Granite Works, as Astoria Granite Works has been directly involved in the construction of the Maritime Memorial and has completed design of all the graphics and associated engraving since inception. It is recommended that Council conduct a hearing for the purpose of taking public comment on the findings for exemption from the competitive solicitation requirements and adopt findings that authorize the direct appointment process to contract with Astoria Granite Works. If findings are adopted, it is recommended that the City Council award a contract to Astoria Granite Works for granite installation and engraving in the amount of \$21,328.

Councilor Warr recused himself, stepped down from the dais, and exited City Council chambers at 8:42 p.m. because he owns Astoria Granite Works.

City Manager Benoit noted that the proposed contract would be in the amount of \$20,528, which is less than what was quoted in the staff report. He displayed photographs of the wall before and after it was damaged.

Councilor Mellin said Astoria Granite Works has been working on the memorial for a long time and she recommended awarding them the contract.

Mayor Van Dusen opened the public hearing at 8:44 p.m. and called for anyone wanting to address the City Council on exemption from the competitive bid solicitation process to come forward with any comments or concerns.

Jan Faber, 3015 Harrison, Astoria, asked who did the original work and how the memorial was damaged. City Manager Benoit explained that the concrete wall was constructed by Wilkins Construction, who is no longer in business. The granite panels were installed by Astoria Granite Works. Ten inches of rain several weeks ago caused the wall to come down, which has never happened before. Insurance adjusters are conducting an analysis.

Mr. Faber asked how the City could be sure this will not occur again the next time Astoria gets ten inches of rain. City Manager Benoit believed Astoria Granite Works had plans to pin the granite panels to the wall through some extraordinary measures.

Mayor Van Dusen asked if staff believed there had been any fault in the installation of the granite. City Manager Benoit stated staff had nothing to indicate faulty installation and had no information about why the wall failed. The balance of the wall is fine and it is unclear why one segment failed. The City has filed an insurance claim on the memorial.

Scott McMullen, 864 Irving Avenue, Astoria, said he was a member of the Maritime Memorial Committee and worked with Astoria Granite Works since Russ Warr has owned the business. He noted that he was speaking for himself, not on behalf of the Committee because the Committee has not discussed this issue. He was in complete agreement with the City's findings and supported the exemption. Mr. Warr has gone above and beyond what is fair to him and has been giving and generous to the Maritime Memorial Park. He urged City Council to grant the exemption.

Mayor Van Dusen closed the public hearing at 8:48 p.m.

Mayor Van Dusen noted that Astoria Granite Works has done all of the work on the Maritime Memorial, which began prior to Russ Warr being part of the company.

Councilor Herzig stated that this appears to be a conflict of interest, so he checked with the Oregon Ethics Commission on this issue, which is why Councilor Warr was required to recuse himself and state the nature of his conflict. The rest of City Council can vote on this agenda item because they and their family members will not profit from awarding the contract to Astoria Granite Works. This situation seems like a tight fit. However, it is clear that City Council can vote on this issue without violating any ethics codes. Mayor Van Dusen asked why this issue seemed like a tight fit. Councilor Herzig explained City Council would be awarding a contract with no bid to a member of the City Council.

Mayor Van Dusen believed Astoria Granite Works is the best company to do the job. He planned to vote in favor of awarding the contract.

**City Council Action:** Motion made by Councilor Mellin, seconded by Councilor Herzig to adopt findings that authorize the direct appointment process and award a contract to Astoria Granite Works for granite installation and engraving in the amount of \$20,528. Motion carried unanimously. Ayes: Councilors Warr, Herzig, Mellin and Mayor Van Dusen; Nays: None.

Councilor Warr returned to the dais at 8:50 p.m.

## **NEW BUSINESS & MISCELLANEOUS, PUBLIC COMMENTS**

Dolores Skillstad, 2314 Front Street, Astoria, said she was concerned with issues relating to property ownership and the authorization to bid on Williamsport Road and Highway 202 Water Main Project Agenda Item 7(c), as this project is near her property. She presented evidence and court records and stated many of the surveys done in the area are inaccurate. She has requested a copy of a map showing the proposed sewer line. The

sewer line runs through her property at this time, but she has not been able to get a map. It has been proven in court that her personal map of her property is incorrect. The Department of Oregon Transportation's map has also been proven in court to be incorrect. She did not understand how a project could be done and a bid authorized when the City does not know where the area is located. She has attempted to bring this issue to the public's attention and no one seems to want to hear about it. This is an historic error that is being built upon and it cannot continue; it is a big problem.

Councilor Herzig asked staff to find the latest survey of the area and look for consistencies with the historical inaccuracies presented by Ms. Skillstad. Ms. Skillstad said she has tried to discuss the issue. She has maps and court documents that support her claims about the inaccuracies and this major error. Councilor Herzig suggested comparing staff's survey to Ms. Skillstad's documents.

Ms. Skillstad stated that a geological survey was recently conducted, but it is inaccurate. There is no point asking staff to produce their survey because it is wrong. The survey must be examined and compared. She has information that can be used to create a survey map, but no one wants to recognize it. It is illogical to have a geographical information system (GIS) map that means nothing; it shows a stream running on top of the hill. This historic error needs to be corrected.

Councilor Herzig was unsure how to correct a recent geological survey. He confirmed Ms. Skillstad is claiming that the wrong area was surveyed. Ms. Skillstad explained that the highway is located in the correct place, but the map has errors. The map shows that her block, Block 23, extends all the way across Williamsport, which affects the properties on the other side of the block as well. Property owners have been required to purchase their own properties. This is wrong and must be corrected. She had legal documents and transcripts of the corrections that need to be made. No one wants to hear about this issue and she believes it should be discussed because it will be another legal issue.

#### **ADJOURNMENT**

There being no further business, the meeting was adjourned at 8:50 p.m. to convene the Executive Session.

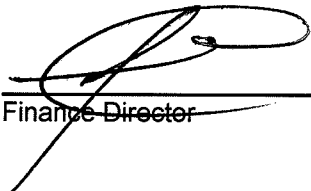
#### **EXECUTIVE SESSION**

The City Council Executive Session was convened at 8:51 p.m.


#### **Item 8(a): ORS 192.660(2)(h) - Legal Counsel**

The City Council Executive Session was adjourned at 9:05 p.m.

**ATTEST:**

  
\_\_\_\_\_  
Finance Director

**APPROVED:**

  
\_\_\_\_\_  
City Manager