



# AGENDA

## ASTORIA CITY COUNCIL

Tuesday, February 16, 2016

7:00 p.m.

2<sup>nd</sup> Floor Council Chambers

1095 Duane Street · Astoria OR 97103

1. **CALL TO ORDER**

2. **ROLL CALL**

3. **REPORTS OF COUNCILORS**

4. **CHANGES TO AGENDA**

5. **PRESENTATIONS**

- (a) Shirley Krepky 25 Year Service Pin (Police)
- (b) Columbia River Estuary Study Taskforce (CREST)

6. **CONSENT CALENDAR**

The items on the Consent Calendar are considered routine and will be adopted by one motion unless a member of the City Council requests to have any item considered separately. Members of the community may have an item removed if they contact the City Manager by 5:00 p.m. the day of the meeting.

- (a) City Council Minutes of 1/19/16
- (b) City Council Work Session Minutes of 1/12/16
- (c) Intergovernmental Agreement (IGA) Between the Cities of Astoria, Seaside and Warrenton for Cooperation in the Provision of Library Services (Library)
- (d) Astoria Senior Center Renovation Project Construction Contract Amendment #5 (Public Works)
- (e) Authorization to Purchase Pickup Truck (Public Works)

7. **REGULAR AGENDA ITEMS**

All agenda items are open for public comment following deliberation by the City Council. Rather than asking for public comment after each agenda item, the Mayor asks that audience members raise their hands if they want to speak to the item and they will be recognized. In order to respect everyone's time, comments will be limited to 3 minutes.

- (a) Ordinance of the City of Astoria Imposing a Three Percent Tax on the Sale of Marijuana Items by a Marijuana Retailer and Referring Ordinance (2<sup>nd</sup> reading & adoption) (Police)
- (b) Resolution Approving Referral to the Electors of the City of Astoria the Question of Imposing a Three Percent Tax on the Sale of Marijuana Items by a Marijuana Retailer within the City (Police)

8. **NEW BUSINESS & MISCELLANEOUS, PUBLIC COMMENTS (NON-AGENDA)**

9. **EXECUTIVE SESSION**

- (a) ORS 192.660(2)(i) – Performance Evaluations of Public Officers and Employees

THIS MEETING IS ACCESSIBLE TO THE DISABLED. AN INTERPRETER FOR THE HEARING IMPAIRED MAY BE REQUESTED UNDER THE TERMS OF ORS 192.630 BY CONTACTING JULIE YUILL, CITY MANAGER'S OFFICE, 503-325-5824.



**CITY OF ASTORIA**  
Founded 1811 • Incorporated 1856

February 11, 2016

**M E M O R A N D U M**

TO: MAYOR AND CITY COUNCIL

FROM:  BRETT ESTES, CITY MANAGER

SUBJECT: ASTORIA CITY COUNCIL MEETING OF FEBRUARY 16, 2016

**PRESENTATIONS**

**Item 5(a): Shirley Krepsy 25 Year Service (Police)**

Police Department Communications Operator Shirley Krepsy will be presented with her 25 year service pin.

**Item 5(b): Columbia River Estuary Study Taskforce (CREST)**

The Columbia River Estuary Study Taskforce (CREST) is a local non-profit, membership-based organization known as a Council of Governments (COG) that provides a variety of services to local governments along the North Coast. Members include cities, counties and ports. The City of Astoria pays annual dues to CREST in exchange for having technical experts do aspects of development review, such as wetland and riparian areas, in water projects, and habitat restoration projects. Denise Lofman, the Executive Director of CREST, will provide an overview of the organization and their activities in Astoria.

**CONSENT CALENDAR**

**Item 6(a): City Council Minutes**

The minutes of the City Council meeting of January 19, 2016 are enclosed for review. Unless there are any corrections, it is recommended that Council approve these minutes.

**Item 6(b): City Council Work Session Minutes**

The minutes of the City Council meeting of January 12, 2016 are enclosed for review. Unless there are any corrections, it is recommended that Council approve these minutes.

**Item 6(c): Intergovernmental Agreement (IGA) Between the Cities of Astoria, Seaside and Warrenton for Cooperation in the Provision of Library Services (Library)**

Since 2010, the City of Astoria has participated in Libraries ROCC! Rural Outreach to Clatsop County. Partners and collaborators include the school districts of Astoria, Jewell, Knappa, Seaside and Warrenton, the Northwest Regional Education Service District, Clatsop County, and the public libraries of Astoria, Seaside, and Warrenton. Libraries ROCC activities include library cards for all children ages birth to nineteen, a collaborative countywide summer reading program, and courier service between the Seaside, Warrenton and Astoria libraries. The Library Directors of the Seaside, Warrenton and Astoria libraries leverage the work of the past six years by seeking community and corporate donations to support ROCC library cards and summer programs and to establish an endowment fund. The financial impact of this IGA for the City of Astoria is estimated at \$850 a year for mileage and staff time to continue courier service. Courier service enables the libraries to continue sharing collections. This cost may be reduced if a grant paid Outreach Coordinator is able to assist with courier service. The current IGA expires April 30, 2016. Attached is a new IGA to continue participation. Any party may discontinue participation with a 90 day notice. This IGA is to be reconsidered in five years and has been reviewed and approved as to form by City Attorney Henningsgaard. It is recommended that Council approve and authorize the City Manager and Mayor to sign the Intergovernmental Agreement between the Cities of Astoria, Seaside and Warrenton for Cooperation in the Provision of Library Services.

**Item 6(d): Astoria Senior Center Renovation Project Construction Contract Amendment #5 (Public Works)**

In July of 2015 the City Council approved a contract with Skyward Construction, Inc., for the Astoria Senior Center Renovation Project in the amount of \$1,455,157.00. A construction contingency of approximately 10% of the construction contract was set aside outside of the construction contract for any unforeseen circumstances that may arise during the project. As is with any remodeling project of the building circa 1947 it is anticipated unforeseen items will emerge during the renovation process. Prior to this current contract amendment #5, the previously approved contract amendments #1, #2, #3 and #4 were in the amount of \$37,539.09. Contract amendment #5 is related to the need to (1) replace the interior wood trim at the main entrance, repair the main entrance door lock, install power and an override switch for the main entrance door, install shelving in the coat and janitor closets, refinish the entire existing concrete interior North wall to receive the final paint at a combined cost of \$4,818.95; (2) furnish and install casework cabinet locks at the Senior Center Manager's request to secure the cabinets at a cost of \$1,467.11; (3) furnish and install service lights in the basement at a cost of \$1,787.70. To date Contract Amendments #1, #2, #3, #4 and #5 would utilize \$42,315.14 of the \$145,515.70 of the contingency. It is recommended that the City Council approve the contract amendment #5 in the amount of \$8,073.76 which will amend the

construction contract for the Astoria Senior Center Renovation Project with Skyward Construction, Inc. in the total amount of \$1,500,769.85.

**Item 6(e): Authorization to Purchase Pickup Truck (Public Works)**

The Public Works Department requested a quote for the purchase of a Ford F-150 4x4 pickup truck. If approved, the new vehicle will replace two older Jeep vehicles currently used by the City Public Works Director and City Engineer. Public Works Administration and Engineering Division currently have four older Jeeps in their fleet. The two newest of the four will be retained for use by the Engineering Technicians and the new pickup truck will be shared by the Public Works Director and City Engineer. This will reduce annual maintenance costs and will also provide a vehicle for on-site visits and travel out of the area. A quote of \$26,996.00 was received from Power Ford, a State purchasing contractor. The State purchasing program is a program in which all Oregon dealers are eligible to participate in the State purchasing program. The Manufacturers Suggested Retail Price on the pickup is \$37,650.00. Funds have been budgeted in the Public Works Improvement Fund for this purchase. It is recommended Council approve the purchase of one Ford F-150 4x4 pickup from Power Ford Lincoln for \$26,996.00.

**REGULAR AGENDA ITEMS**

**Item 7(a): Ordinance of the City of Astoria Imposing a Three Percent Tax on the Sale of Marijuana Items by a Marijuana Retailer and Referring Ordinance (2<sup>nd</sup> reading & adoption) (Police)**

This proposed ordinance received its first reading at the February 1, 2016 City Council meeting. The ordinance would allow cities an opportunity to impose up to a three percent tax on sales of marijuana items made by those with recreational retail licenses. This tax must be imposed by referring an ordinance to the voters at a statewide general election, meaning an election in November of an even-numbered year. There is no provision in law for taxing medical sales. To refer the matter to the voters, Council would hold a first reading and second reading of the ordinance at separate meetings then adopt the ordinance by a roll call. After adopting the ordinance Council would adopt the resolution as presented under Item 7(b). This adoption will set the ballot title. The ballot title will be published in the "newspaper of general circulation in the city." After a period of review, if no objection to the ballot title is filed the matter will be filed with the County Elections Official. It is recommended that Council conduct a second reading and adopt the ordinance to refer a three percent local option tax to the November 8, 2016 ballot.

**Item 7(b): Resolution Approving Referral to the Electors of the City of Astoria the Question of Imposing a Three Percent Tax on the Sale of Marijuana Items by a Marijuana Retailer within the City (Police)**

In order to impose the three percent tax as described in Item 7(a) "Ordinance of the City of Astoria Imposing a Three Percent Tax on the Sale of Marijuana Items

by a Marijuana Retailer and Referring Ordinance”, a resolution needs to be adopted that will set the ballot title. This title will refer to the electors of the City of Astoria the question of imposing a three percent tax on the sale of marijuana items by a marijuana retailer within the City. The ballot title will then be published in the “newspaper of general circulation in the City.” After a period of review, if no objection to the ballot title is filed the matter will be filed with the County Elections Official. It is recommended that Council adopt the proposed resolution.

## **EXECUTIVE SESSION**

**Item 9(a): ORS 192.660(2)(i) – Performance Evaluations of Public Officers and Employees**

The City Council will meet in Executive Session to discuss performance evaluations.

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

Councilors Present: Nemlowill, Herzig, Warr, Price, Mayor LaMear

Councilors Excused: None

Staff Present: City Manager Estes, Police Chief Johnston, Community Development Director Cronin, Planner Ferber, Special Projects Planner Johnson, Parks and Recreation Director Cosby, Finance Director Brooks, Fire Chief Ames, Library Director Tucker, Public Works Director Cook, and City Attorney Henningsgaard. The meeting is recorded and will be transcribed by ABC Transcription Services, Inc.

## REPORTS OF COUNCILORS

### Item 3(a): Mayoral Boards and Commissions Appointments

Mayor LaMear announced the following new appointments and reappointments:

- Budget Committee Richard Hurley
- Design Review Committee Leanne Hensley
- Historic Landmarks Commission Paul Caruana, Jack Osterberg
- Hospital Authority Celia Davis, Nicole Williams
- Parks and Recreation Board Josie Ballenger, Aaron Crockett, Jim Holen, Jessica Schleif
- Planning Commission McLaren Innes, Frank Spence
- 3R Committee Bob Goldberg, McLaren Innes, Eric Noguerra

Prior to making the appointments, Mayor LaMear stated she had sought input from City Council and Department Directors, noting she did not make appointments in a vacuum. Those reappointed are doing a great job and she welcomed new members. She thanked all of the commission and committee members for their service.

**Item 3(b): Councilor Warr** reported that City Council held a work session to discuss Heritage Square; he attended a Maritime Memorial Committee meeting on Wednesday, January 13<sup>th</sup> to discuss expansion of the memorial, a Columbia Pacific Economic Development (Col-Pac) meeting, and a Northwest Area Commission on Transportation (NACT) meeting. The NACT meeting included an extensive report by cities and counties about the damage that occurred during storms in December. Clatsop County and Astoria were very lucky, but Tillamook County suffered about \$8 million in damage and Columbia County had over \$3 million in damage. The usual practice of cutting trees back from highways has saved the County a lot of money in high wind events and storms and allows people to remain mobile.

**Item 3(c): Councilor Price** reported she had many opportunities over the last couple of weeks to meet with constituents and residents. She thanked those who attended her meet and greet on Saturday, January 16<sup>th</sup> to discuss the library.

**Item 3(d): Councilor Herzig** reported that the Astoria Warming Center has been open for 44 nights this winter. It is likely the warming center will be open again January 21 – 23. While it is not especially cold, rainy nights leave their guests soaked to the bone. So far we have had 95 overnight stays, which indicates there is definitely a need for the warming center. The warming center may just be a band-aid, but it is keeping people alive and gives people hope that they can get into other programs or permanent housing. The 5<sup>th</sup> Annual Martin Luther King Jr. Day Candlelight Walk and Supper had a small, but dedicated crowd. The supper was hosted by Peace Lutheran Church and the Northcoast Food Web.

**Item 3(e): Councilor Nemlowill** reported that she has enjoyed learning about the Heritage Square site from all angles. Earlier that day, she and Councilor Price toured the underground portion of the elevated parking lot at Heritage Square, which contained a pile of automobile scraps, a power transformer substation, and a pile

of contaminated soil. Jeff Daly, who also attended the tour, believed the scraps were from 30s or 40s era automobiles. The substation, referred to as The Vault, used to power all of the lights in Downtown Astoria. The soil still needs to be removed, but the vast majority of the work under the parking lot is complete.

**Item 3(f): Mayor LaMear** reported that she was honored to serve on the Clatsop Community College Presidential Search Committee. The committee has received 34 applications, all from outstanding applicants. It is amazing that all of these people have applied to come to Astoria because the college is not large and Astoria only has about 10,000 people. The committee will select 12 applicants to be interviewed on January 21<sup>st</sup> and 22<sup>nd</sup>. An open house will be scheduled so the public can meet the candidates.

## CHANGES TO AGENDA

There were none.

## CONSENT CALENDAR

The following items were presented on the Consent Calendar:

- 5(a) City Council Minutes of 12/21/15
- 5(b) Department Project Status Reports
  - (1) Community Development
  - (2) Finance Department
  - (3) Library
  - (4) Parks and Recreation
  - (5) Police Department
  - (6) Public Works
- 5(c) Pump Station No. 1 Upgrades – Progressive Design Build Contract Amendment for Equipment Procurement (Public Works)
- 5(d) OR202 Sidewalk Project – Local Agency Agreement (Public Works)
- 5(e) 23<sup>rd</sup> Street Closure – Local Agency Agreement (Public Works)
- 5(f) Astoria Senior Center Renovation – Construction Contract Amendment No. 4 (Public Work)
- 5(g) Loan Agreement R17794 Amendment (Finance)
- 5(h) 16<sup>th</sup> Street CSO Separation Project – Pay Adjustment No. 5

Councilor Herzig noted the items on the Consent Calendar indicated the incredible amount of work staff has done on many projects and staff deserves a lot of credit.

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

## REGULAR AGENDA ITEMS

**Item 6(a): Ordinance Readopting Oregon Revised Statutes – Code Section 1.047 (2<sup>nd</sup> reading & adoption) (City Attorney)**

This ordinance received its first reading at the January 4, 2016 Council meeting. The 2015 legislation passed by the Oregon Legislature, for the most part, became effective on January 1, 2016. Many of our City ordinances refer to or incorporate State statutes. Every year, the City routinely re-adopts all referenced ORS sections to pick up any changes made by the legislature. This is done by a "global re-adoption," which was the technique recommended by the League of Oregon Cities. The City is legally unable to prospectively adopt Oregon legislative changes, that is, we cannot adopt a State statute "as it now exists and is from time to time amended." The proposed ordinance has been reviewed and approved by the City Attorney. It is recommended that Council conduct the second reading and adopt the proposed ordinance.

Director Cronin conducted the second reading of the ordinance.

**City Council Action:** Mayor LaMear called for a vote without a motion or second. City Council unanimously consented to adopt the ordinance readopting Oregon Revised Statutes (Code Section 1.047). Ayes: Councilors Price, Warr, Herzig, Nemlowill, and Mayor LaMear; Nays: None.

**Item 6(b): Public Hearings – Appeals by Ron Zilli (Community Development)**

- (1) AP15-01 – New Construction Permit NC15-03 for Verizon Wireless**
- (2) AP15-02 – Variance V15-03 for Verizon Wireless**
- (3) AP15-03 – Wireless Communications Facility Permit WCF15-03 for Verizon Wireless**

On August 3, 2015, Verizon Wireless LLC applied for a New Construction permit (NC15-03) to the Historic Landmarks Commission (HLC) to construct a new wireless communication facility at 1580 Shively Park Road within Shively Park. On September 15, 2015, the HLC held a public hearing and approved the request with conditions. A Notice of Appeal (AP15-01) on the HLC decision was submitted by Ron Zilli on September 30, 2015. On August 3, 2015, Verizon Wireless LLC applied for a Variance permit (V15-03) to the Astoria Planning Commission (APC) to construct a new wireless communication facility at 1580 Shively Park Road within Shively Park with a height of 150-feet which exceeds the 45' maximum height. On September 16, 2015, the APC held a public hearing and approved the request with conditions. A Notice of Appeal (AP15-02) on the APC decision was submitted by Ron Zilli on September 30, 2015. On August 3, 2015, Verizon Wireless LLC applied for a Wireless Communications Facility permit (WCF15-03) to the Astoria Planning Commission (APC) to construct a new wireless communication facility at 1580 Shively Park Road within Shively Park. On September 16, 2015, the APC held a public hearing and approved the request with conditions. A Notice of Appeal (AP15-03) on the APC decision was submitted by Ron Zilli on September 30, 2015.

The Notice of Appeal, which details the appellant's concerns, can be found on the attached Record on each of the permits. A complete record of each of the requests has been compiled. A public hearing on the Appeal was advertised and scheduled for the November 16, 2015 City Council meeting. At the November 16, 2015 meeting, the Council continued the public hearing to December 7, 2015 at the request of Verizon. At its December 7, 2015 meeting, the Council continued the public hearing to the January 4, 2016 meeting due to the holidays to allow for greater public participation in the hearing. At its December 17, 2015 meeting, the City Council continued the public hearing to the January 19, 2016 meeting at the request of Verizon.

The appellant asserts that the NC15-03, V15-03, and WCF15-03 permits for the proposed 150-foot tall, metal wireless communications facility tower should be denied. The specific issues for denial on each of the permits appealed by Mr. Zilli are summarized on an attachment to the Council memo. Staff and the attorney for the applicant, Verizon Communications, have submitted additional Findings of Fact to address the issues raised by the appellant. Verizon has also submitted revised photo simulations and documents addressing the concerns raised in the appeals.

Due to the fact that the three appeals are related to the same facility and site, it is recommended that Council hold a combined public hearing on the three appeals; however, the Council decision on each appeal will need to be done with separate motions. It is recommended City Council hold the public hearing on the appeals and consider whether to uphold or reverse the Historic Landmarks Commission decision and the Planning Commission decisions to approve the Requests with conditions. If the Council upholds the decisions, the Council needs to adopt the HLC and/or APC Findings of Fact and Supplemental Findings of Fact. If the Council reverses the decision, staff will prepare revised Findings of Fact for consideration at the February 1, 2016 meeting.

Special Projects Planner Johnson distributed documents at the dais that were inadvertently omitted from the Record packet. She reviewed the three sets of Findings of Fact highlighting the key issues that were appealed. She displayed the revised photo simulations and described the details of each photo. Correspondence, made available to City Council, included an email from Dan Stephens, a letter from Dwight Caswell, and a presentation by Ron Zilli.

Mayor LaMear asked staff to explain the difference between the National Historic designation of the Column and the Local Historic designation of Shively Park. Special Projects Planner Johnson said each community decides how to govern the National and Local historic designations. Astoria's Historic Properties Ordinance states the two designations are equal, so code restrictions are the same for both Local and National Historic Landmarks; however, the Nationally designated properties are eligible for grants, special assessments, and other funding programs that the Local Landmarks are not.



Councilor Nemlowill asked if separating Shively Park from the Column is justified considering the co-location of the tower. Special Projects Planner Johnson explained that co-location is required on all existing and new facilities to accommodate future facility locations. The existing tower on Coxcomb Hill cannot accommodate upgrades, so City Council decided to remove the tower. The tower at Shively Park is not contingent upon the removal of the tower at Coxcomb. Verizon determined that the tower site at Shively Park gives the south area of Astoria the best coverage. Co-location of other facilities on the tower would only be considered in the future for new facilities that are reviewed and approved through the permit processes. She explained that the condition of approval regarding the removal of the tower at the Column was included because the facilities on the tower are being relocated and staff wanted to make sure an inactive tower was not left at the Column.

Councilor Herzig confirmed the proposed tower at Shively Park would not be used as part of the City's emergency communications. Special Projects Planner Johnson noted the emergency communication facilities would be located on the tower proposed for the reservoir site at the east end of Astoria. She understood there were also other emergency communication facilities in various places around town.

Councilor Herzig said he wanted to see a photograph showing the height of the tower because the tower will extend above the tree line. Special Projects Planner Johnson stated she had requested this from Verizon, but was told that both companies who developed photo simulations for Verizon found it impossible to achieve the angle necessary to photograph such a view. She confirmed that use of a drone was discussed.

Councilor Price stated she would ask her questions later because she wanted to hear testimonies first.

Mayor LaMear asked staff to define the Institutional Zone. Special Projects Planner Johnson explained that government owned properties that have no other uses are located in Institutional Zones. Examples of these properties include Shively Park, Clatsop Community College, and some of the School District properties. Smaller parks are located in residential zones, but the larger parks are generally in the Institutional Zone, which limits the use to government uses, utilities, and park uses.

Councilor Nemlowill asked how the Park's historic designation applied to the section of the Development Code regarding the criteria for assessing appropriate scale of the project. She believed the HLC found it difficult to define the word "structure." Special Projects Planner Johnson said the Development Code allows any site, appurtenance, or structure to be designated as historic. The language in the Code regarding new construction only uses the word structure because it is the most common. In this situation, Shively Hall is the structure and Shively Park is the site. She confirmed that staff struggled with how to apply the criteria to the "site", but because the site is designated as historic, the criterion does apply.

Mayor LaMear opened the public hearing for AP15-01, AP15-02, and AP15-03 at 7:35 pm and asked if anyone objected to the jurisdiction of the City Council to hear these matters at this time.

Ron Zilli, 1444 16<sup>th</sup> Street, Astoria, stated he had requested a change of venue, which was denied. He was concerned that this project had been closely linked with projects previously considered by Verizon, Friends of the Astoria Column, and Converge Communications. The City has heavily invested in removing the tower from the Column site, the construction of the new tower where the emergency communication facilities would be installed, and reimbursing the Friends of the Column for their contract with Converge. Verizon does not want to move their facilities from the Column site and have only agreed to move because they will benefit. If Verizon does not get Shively Park, the entire deal is off. He believed the City's investment in this project would prevent City Council from considering the appeals objectively.

Mayor LaMear asked if any member of the City Council had a conflict of interest or ex parte contact to declare.

Councilor Nemlowill stated that she would consider the appeals objectively. She declared that she had read two articles in the *Daily Astorian* and one Facebook post by Andrea Mazzarella about the appeals, which were publicly available. The Facebook post included a link to one of the newspaper articles and stated, "Hey Astoria, remember when I was posting about the monopole going up at Shively and the \$70,000 Astoria spent on consulting fees and how that whole thing didn't sit well? Well, I guess I'm not the only one."

Councilor Herzig declared an ex parte contact. Upon staff's advice, he visited Shively Park and learned there was a road leading to a private residence adjacent to the southwest side of the Park. City Council received copies of the letter from Mr. Stevens and he received emails from Mr. Stevens and Dwight Caswell. He also read an article in the *Daily Astorian* after Councilor Price posted a link to the article on Facebook. He also received a link to some images from a constituent. The images were of monopoles decorated to look like cacti and pine trees and had been presented to City Council about a year ago. He believed he could still make an unbiased decision.

Councilor Price declared that she first heard about the appeals during a conversation with Mr. Zilli in September 2015 before the appeal was filed. Since then, she has thanked many constituents and residents for their input and told them that this issue is complex; however, she has not discussed the appeals with these people. She is very active on social media and has read and researched everything that has been posted on Facebook, Astoria Forum, and in the *Daily Astorian*. She visits Shively Park semi-regularly and visited recently to get an idea of where the tower would be located. She considered this a natural way to proceed in this situation and believed she could make an unbiased decision.

Councilor Warr declared that he had received correspondence, but never responded. He believed he could be unbiased. He understood that the City Attorney indicated there was no legal basis for a change of venue and that City Council had jurisdiction over these appeals.

City Attorney Henningsgaard confirmed that City Council is the governing body that has the jurisdiction to make a decision on these appeals. No other governing body has such jurisdiction. Even if a hearings officer or the Planning Commission conducted the fact-finding, City Council would still be obliged to make the decisions.

Mayor LaMear explained the procedures governing the conduct of public hearings to the audience and advised that handouts of the substantive review criteria were available from staff. Due to the fact that all three appeals are related to the same facility and site, staff recommended City Council conduct a combined hearing on all three appeals; however, City Council's decision on each appeal would be made in separate motions. She called for a presentation by the Appellant.

Mr. Zilli stated that Astoria Development Code Section 9.030.D.6 required the City Council allow the public record to remain open for seven days after the public hearing if requested.

City Attorney Henningsgaard responded that this is an appeal, not the initial hearing. There is no requirement to keep the public record open; however City Council does have the option to do so. If Council chooses to keep the public record open for seven days, the procedure for doing so could be discussed after the hearing has closed.

Mr. Zilli disagreed with Planner Johnson's statement that no additional information other than the Development Code that was originally appealed could be heard. He believed that the City Code allowed City Council to hear other information as long as it was discretionary. He gave a PowerPoint presentation with the following comments:

- Key points regarding the background information and history of the project:
  - The project to relocate the tower and wireless communications facility from Coxcomb Hill to the site at the reservoir has received a lot of public exposure and discussion; however, the site and facility at Shively Park has not because this component of the project was only revealed during the summer of 2015. As a citizen, he was concerned that much of the work had been done behind closed doors.
  - He referred to the Executive Summary portion of the information packet he had made available to staff and City Council. The summary contained highlighted sentences in a report from the Friends of the Column, which indicated the City and Converge Communications executed non-disclosure agreements with Verizon Wireless in September 2013.
    - In the public record, he was unable to find statements indicating the Friends informed Council of their intent to publish Requests for Proposals (RFP) and there is no record of City Council passing a motion to authorize the Friends to enter into a contract with Converge, on behalf of and in partnership with the City; however, he did find City Council's motion to approve the RFP process for work on the caretaker's house at the Column. The Police Chief and City Manager served on the selection committee that reviewed the proposals requested by the Friends and administered the contract with Converge.

- He believed the non-disclosure agreement has resulted in a lack of information about site consideration and other aspects of the project; however, the site and type of pole was decided upon. He was not contesting compliance with the legal process, but believed the process was designed to minimize exposure.
- As part of a public information request, he received information that had been redacted because of the non-disclosure agreement. Therefore, he was unable to obtain information about Verizon's current network and future network expansion plans. He was not sure it was legal to withhold this information according to public records laws. Once the City reimbursed the Friends for that body of evidence, it became public domain in its entirety.
- Testimony supporting his appeal of NC15-03 approved by the HLC:
  - Development Code 6.070.B.1 states the design of the proposed structure is not compatible with the adjacent historic structure's scale, style, and height, architectural details, or materials. It has been stated, and he concurred, that the appropriate scale to assess this project is the entire site of Shively Park and the appropriate context is separate from everything going on at the Column, on Reservoir Road, and the City's emergency communications.
    - All of the adjacent structures at the historic landmark site are low profile wooden structures that fit nicely into the landscape. The proposed 150-foot tall, metal cell tower and associated equipment enclosures are out of character with the scenic, natural, and historic resources, including the existing buildings, structures, and features within the historically designated site.
  - He noted that he has listened to the audio recordings and read the staff reports of all of the hearings that led to the approval of the permit applications he has appealed.
  - In the staff report presented to the HLC on September 15, 2015, Planner Johnson stated that when looking at compatibility with a historic structure, it is impossible to have a wireless communication facility that will be compatible with the height, scale, and material of the structure, based on the nature of the project because this is a park that has been designated as historic. She had explained that staff considered the best ways to buffer the view of the tower and stated Shively Park was the ideal location for Verizon given the service area.
    - Since the tower is so blatantly non-conforming to the Development Code, Planner Johnson was reduced to evaluating the best available buffering for the trees from the clearing by the picnic area to demonstrate conformity to applicable sections of the Code. Her statements demonstrated this criterion was not met.
    - He believed Planner Johnson showed bias and favor towards the Applicant by attempting to find a way to make the tower fit into the Code and indicated she had helped with the siting choice. Basing her perspective of impacts to the Park on users from the picnic area was an inappropriate measure of how the majority of Park users experience the Park and would be impacted.
    - He lives near the Park and has visited the Park for about 20 years. He has almost never seen anyone in the picnic structure, but all of the pictures were taken from the picnic area.
    - The HLC was biased by statements from Chief Johnston at that meeting when he said the permit was part of a deal that would lead to approved emergency communications for the City. Chief Johnston also stated that the site is not critical to the City's emergency communications improvements except that it allows the deal to get done and move primary communications facilities to the reservoir site. This was also part of a whole systems upgrade for Verizon that allows both the City and Verizon to meet their needs. The two sites are so closely tied together that they are as one.
  - The proposed location is in a portion of the Park that has a very natural setting. It is his experience that this area receives more frequent low intensity recreational use than the community hall or picnic area. Using the expected and previously underestimated visual impact from the picnic area as criteria for compatibility indicates that staff did not consider how citizens use the Park.
  - The Applicant has failed to produce photo simulations showing the entire height of the tower from within the Park or depict the full impact of the monopole with all of the equipment contained in the application from any vantage point. Verizon claims these images were not possible, which he found curious considering the images he submitted with his appeal and images contained in the staff report did show the full height. Therefore, he concludes Verizon intentionally omitted the views because they would be detrimental to the determination of significant adverse impacts.
    - The mock up images provided by Verizon do not include the microwave antennas that will be installed on the tower or were included in their current application. Everything that will be on the tower must be included in order to consider visual impact. The antennas will be approximately six inches in diameter.

- The lease agreement with Verizon requires that they allow other providers to co-locate on the facility, which is a historic landmark site. He understood the necessity to eliminate a proliferation of towers via co-location; however, the additional co-location equipment on the tower has not been depicted and the HLC and APC had no opportunity to review the impact of this equipment.
- A depiction of the tower fully occupied should be represented because City Council cannot determine compatibility without all of the facts.
- Development Code 6.070.B.2 says the location and orientation of the structure is to be aligned with a location and orientation of adjacent structures within the Park. In this case, a 150-foot tower is to be placed in a scenic area with low intensity uses. The adjacent structures all have low profiles. The Supplemental Findings of Fact that justify and demonstrate alignment with this specific criteria state that utility poles are generally located within the right-of-way and are highly visible. He displayed images of the utility poles referred to in the staff report. One is approximately 20 feet tall and the other two are approximately 28 feet tall.
  - The very short poles do not provide any rational comparison that a reasonable person would use to demonstrate that a 150-foot tall tower would have less impact than a cell tower of this size that is required to be appropriately screened.
- Development Code 15.065.B.2 states wireless communications facilities shall not create a substantial adverse impact on the view from any public park, natural scenic vista, historic property, locally designated or nationally registered, major scenic view, view corridor, or residential area. The proposed facility will create a substantial adverse impact on the views within Shively Park from several locations. The updated photo mock up images fail to show the view of the completed tower from within the Park and address adjacent properties. The tower would also be visible from the adjacent reservoir site, which is a popular tourist area.
  - At the HLC meeting of September 15, 2015, Director Cosby said the tower would not be visible from the parking area. He did not believe this would be true. He believed the tower would be visible from the Shively Park parking lot near the community hall. Director Cosby's statement at that meeting was misleading and was likely due to the small depiction of the tower impact supplied by Verizon. Nonetheless, the HLC did not have the opportunity to review legitimate information about what the impacts would be.
  - The wireless communication facility will have a substantial impact on the views from several residential areas as well. Despite new photo simulations revealing the tower will be visible from 13 out of 18 locations, staff concluded the tower would not be highly visible. This Finding of Fact was determined on a subjective assessment by the author of the report. He did not believe the report was accurate; the tower would have a significant adverse impact on several residential areas.
- There is substantial evidence that New Construction Permit NC15-03 does not conform to the Development Code and should be denied.
- Testimony in support of his appeal of V15-03 approved by the APC:
  - Development Code 15.065.B.2 states that a wireless communication facility shall not create an adverse impact on the view from any public park, natural scenic vista, historic property, locally designated or nationally registered, major scenic view, view corridor, or residential area. Shively Park and the adjacent reservoir site are both designated as historic. Two individual sites would be impacted relevant to this Development Code criterion.
    - At the APC meeting of September 16, 2015, staff stated the tower would not be visible from the parking area. He believed the statement was in error and the additional evidence led him to believe the tower would be visible from the parking area.
    - The tower will have a substantial adverse impact on the views from several residential areas. Despite new photo simulations revealing the tower will be visible from 13 out of 18 locations; staff concluded the tower would not be highly visible. He believed these Findings of Fact were in error and were subjectively determined to be in favor with bias to the Applicant. He displayed photos of the views from the 18 locations, noting which locations would allow a view of the tower. At that same APC meeting, Planner Johnson stated the tower would not be visible from any major spots in residential areas. This is not true.
  - The Supplemental Findings of Fact acknowledge that the original photo simulations were in error, and then attempted to mitigate the error with photo simulations by restating why the tower needs to be 150 feet tall. The Applicant resubmitted a letter stating the tower must be 150 feet tall because there are 145-foot tall trees in the area. An additional condition of approval limits the tower to 150 feet.

- The tower does not need to be 150 feet tall to meet Verizon's current needs. He only found one tree on the site survey that is 145 feet tall. The average height of the trees in the vicinity of the tower site is between 100 and 105 feet. The trees slope away from the tower site.
- The network system Verizon is trying to establish with the triad of sites, the Astor Hotel site, the Reservoir site, and the Shively Park site, will not be significantly impacted by the area to the north of the tower site that contains the 145-foot tall tree.
- On July 20, 2015, Verizon submitted a statement of compliance that included documents showing a tower extending above tree level that has been designed for at least two additional carriers. Verizon needs the tower to be 150-feet tall so it can accommodate the additional carriers lower on the tower while allowing Verizon to put its facilities on the best portion of the tower. The tower could be lower.
- He showed photographs of antennas and dishes that have been authorized by Verizon and could be placed on the tower. They should be considered for visual impact. He also showed a photograph depicting how the tower would look with full occupancy.
- He believed the proposed height was a result of the work completed by Converge, who scoped backbone infrastructure for the next 40 or 50 years.
- He did not believe the HLC or APC would have approved any of the permits if Sprint had been the Applicant.
- Information regarding future co-locators that was included in the application has not been fully considered. Chief Johnston had told the HLC that it was highly anticipated co-locators would come to Astoria soon. He believed Verizon had already begun to advertize spaces for lease on the tower. Filling leases as soon as the tower is built will help offset costs and is good business. This is why the tower will not be better camouflaged.
- Development Code 15.065.B.3 says location, siting, and design require the use of concealment technology and all wireless communications facilities shall utilize concealment technology so as to blend in with the surrounding natural environment in such a matter as to either be reasonably difficult for the naked eye to detect or made part of an enclosed feature. To this end, wireless communication facilities shall be designed so as to be camouflaged to the greatest extent possible.
  - In this case, the bottom portion of the tower would need to be painted brown. The rest of the tower will look like an Erector Set. There are many good and bad examples of camouflaged towers; however, if the tower needs to be camouflaged, it is possible to find a better way. It would be inconvenient to reconfigure the look of the facilities on the tower, but the full impact of the co-locators has not been considered thus far in the process. This is why Verizon has only agreed to paint the bottom half brown and leave the top half metal.
  - He displayed three images, two of which were included in the staff report. One shows Verizon's current service from Coxcomb Hill and one showed the coverage area after the facilities are removed from Coxcomb Hill. Comparing these two photos with the third is the only way to get a true depiction of coverage because Verizon has claimed the Shively Park site is necessary to increase the current level of coverage; however, Astoria is not obligated to bear this burden because Verizon could put another tower out in the countryside to increase coverage. The triad of towers will serve a great deal of Verizon customers that do not reside within the City of Astoria.
  - It has been demonstrated that the tower could be as much as 34 feet lower, but the tower will have co-locators. He was not debating the service was not needed, but basing the height of the tower on the height of the trees is not justifiable.
- Development Code 12.030.A.1 and 2 says the granting authority may grant a variance if on the basis of the application, investigation, and evidence submitted by the Applicant, all four of the applicable Findings are made. The request must be necessary to prevent a hardship. The variance for the height of the pole is not necessary because it does not prevent a hardship. If the pole were 30 feet lower, the coverage may not be as good, but coverage would still exist and the visual impact would be minimized. Additionally, the images shown previously show the substantial visual impact to the nearby neighborhoods would be different from what was originally stated.
- Development Code 12.030.B.2 states that in evaluating whether a particular request is to be granted, the granting authority shall consider the following together with any other relevant facts or circumstances: The physical impacts the development will have on the visual, noise, traffic of the affected area, and the incremental impacts occurring as a result of the proposed variance.
  - The staff report indicates Planner Johnson stated considering co-location equipment was not within the scope of the review criteria; however, the co-location equipment is necessary. The application indicates the tower is being designed to accommodate at least two other co-locators, but none of

that information was ever shared with the HLC or APC. This omission is very relevant to making a determination.

- He showed a photograph of the view from 15<sup>th</sup> and Niagara and indicated where the additional carriers would be visible.
- Development Code 9.020.A.1 requires the name of the Applicant be published on the notice, but the Applicant's name did not appear on that notice. The notice also stated the hearing was for NC15-01 instead of NC15-03.
- There is substantial evidence that Variance V15-03 and Wireless Communications Facility Permit WCF15-03 do not conform to the Development Code and should be denied.

Councilor Herzig said it was obvious that the construction of the tower would be somewhat disruptive to the people who live nearby. Future disruptions would also occur when new facilities are installed on the tower.

Mr. Zilli agreed and said he considered disruption to Park users to be less substantial because he believed most of the Park would remain accessible during construction. It does take a significant amount of time to erect a wireless communication facility.

Mayor LaMear confirmed that Mr. Zilli believed Verizon's claim that the trees are 145 feet tall was incorrect. Mr. Zilli noted the revised images show about 50 feet of equipment space above the trees. The tower will be placed at a high point on the end of a ridge because it is designed to serve the South Slope, Young's Bay, and Cooper's Slough Valley. The trees in the general vicinity are barely over 100 feet tall. The document overstates the height of the trees. He has visited the site to confirm there are no deciduous trees that are 120 feet tall. There is one 145-foot tree that Verizon has used as its benchmark, but this tree is not near the service area; it is behind the service area to the north, but Verizon is using it as justification. Verizon is selling space on the tower, which is just business; however, it is a fact that Verizon has intentionally designed the tower to accommodate two co-locators.

Mayor LaMear explained that while it is reasonable to anticipate co-location, currently there is no way of knowing for sure. Mr. Zilli reiterated that the tower was designed to accommodate co-location. Verizon's application dated July 20, 2015 included a statement of compliance that clearly stated the tower would be 150 feet tall to provide for at least two additional carriers. Verizon's reason for this is legitimate; however, the HLC and APC did not consider this information.

Mayor LaMear confirmed this statement was in the second paragraph of Page 53 of the agenda packet. Mr. Zilli added that Verizon's original application contained microwave antennas that have not been depicted in any of the photo simulations. The HLC and APC should have considered the visual impact of these antennas.

Councilor Herzig asked if a tower in the flat area of Young's Bay could provide similar coverage. Mr. Zilli replied that location would provide reduced coverage because of the natural topography and the height of the tower. Shively Park is a good location because the coverage extends out over the steep area, the Cooper's Slough area, the south mountain, Young's Bay, and the South Slope; however, the permits were not considered appropriately.

Mayor LaMear asked if Mr. Zilli would be satisfied if the tower were shorter and better concealed. Mr. Zilli said the design would need to be reviewed against the criteria. There are good and bad examples of camouflaged cell phone towers. One example is the tower across from Camp Rilea on Highway 101 that was installed a few months ago and designed to look like a tree and it blends in well. The proposed tower will be located in a park, so its ability to blend in well is a big component of this project. Weddings are held in the Park because it so beautiful, picturesque, remote, and unobstructed by society. The Park is a historic site and people use the knoll a lot during the summer. The criteria simply have not been met. Verizon has tried to stuff a square peg in a round hole to broker a deal. He does not discount the legitimacy of any other aspects of the deal, but Verizon could have submitted a better packet of information. This deal protects the interest of the City and the Column, but not the citizens because the public had no visibility of the discussions with Converge. When the Friends asked the City for a reimbursement, Shively Park was never mentioned. The request to vacate a portion of Nile Street included the first mention of Shively Park only because it was necessary. This began the legal administrative process. He recalled that some of the Councilors were very concerned about this and asked questions that led to the August 3<sup>rd</sup> Work Session; however, the citizens and the Parks Board had very little visibility and were

shown poor mock up images. None of the governing bodies appointed by City Council have had an opportunity to weigh and consider the facts.

Councilor Warr said Mr. Zilli had done a marvelous job on his presentation; however, some aspects of the Code are very subjective in his opinion. He asked Mr. Zilli to explain his definition of substantial adverse impact, who would be impacted, and what some of the negative effects of the adverse impact would be. Mr. Zilli noted Shively Park is a very forested area and people go there for the tranquility. It is the only place within the City limits that provides views that are free of any development. Putting a tower at that site will result in a significant change that will impact the people who use that are for special events. The whole character of the Park will change. The Parks and Recreation master planning process is not park specific and factors in all of the parks. He went on the Parks tour and learned the department does a great job with a limited staff and budget. Installing a tower at Shively Park will impact the future of the park. Making a decision now is premature relative to how the Park factors into the long-term aesthetics of Astoria. He understood the Park was not used as much as the Column; however, most of the Column users are visitors while Shively Park is primarily used by Astoria residents. The visual impact will be situational to residents. A few residents will have a clear view of the tower, which could be significant. He agreed there were some benefits to the project, but the tower's design does not comply with the Development Code, which characterizes the adverse impacts.

Councilor Warr understood the variance criteria required the tower to minimize as much as possible the adverse impacts. The tower is for utilities. All of the transmission towers going up the hill and telephone poles throughout the City can easily be seen and they definitely have an adverse visual impact; however, he did not believe anyone wanted to remove the towers or poles. Mr. Zilli responded that people go to parks to get away from the views of those towers and poles.

Mayor LaMear called for testimony in favor of the appeals, noting that favoring the appeals opposed the permits granted by the HLC and APC.

Shel Cantor, 1189 Jerome, Astoria, commended Mr. Zilli for devoting his time, energy, and money into researching, filing, and supporting the appeals. He supported the appeals because the HLC and APC did not have access to photo simulations of the height of the tower and the year round visual impact of the completed tower after the trees had been removed when they reviewed Verizon's applications. The facilities appearance is crucial to the evaluation criteria relevant to reviewing Verizon's applications, notably any criteria that addresses potential impacts, such as City Code 6.070. The City Code warrants at least remanding the applications and requires more realistic depictions. At the August 3<sup>rd</sup> City Council meeting, Councilor Nemlowill questioned whether the goals and outcome would have been different had Converge been on contract with City Council from the beginning of the negotiations. Upon voting against the lease agreements at that same meeting, Councilor Herzig recounted that other locations had been considered for this tower and stated the City could have worked harder to get the tower out of a public park. He did not doubt staff's participation in the negotiations represented the best interests of Astoria; however, different people with the same motivation can still have different priorities when evaluating competing factors, like weighing monetary benefits versus an aesthetic detriment. Reviewing something with different perspectives and questions might trigger other ideas that could lead to a previously overlooked outcome that would be better. Mr. Zilli demonstrated that humans can miss things, even experts despite their best intentions. The Supplemental Findings of Fact list five alternate locations considered and eliminated during negotiations. He did not believe City Council had reviewed the evaluation of those five sites, nor have they explored other ideas. He believed Council should do both.

Jan Nybakke, 1320 15<sup>th</sup> Street, Astoria, said she visits Shively Park at least four times each week. She objected to unnatural constructions in parks in an attempt to protect the parks sense of place, which she valued. She also objected to constructions that do not further or enhance the purposes or interpretations of those spaces. Shively Park is the Pacific of Astoria's Parks and Recreation natural areas. The recent Parks Master Plan Survey asked what park offerings people valued most. Her property offers a stellar, uninterrupted, southern view of Shively Park, as well as opportunities to walk in the Park, on Williamsport Road, and James Street. She asked that her view remain unobstructed. She described Venus's position in the sky at night in December, noting it can be viewed above the trees in Shively Park. Uninterrupted spaces offer opportunities to observe plants, moons, stars, and constellations. The almanac encourages people to pay attention to eye-catching events in the night sky. Construction in Shively Park will result in soil disturbances that threaten ground stability. Equipment for construction, repairs, and monitoring going in and out will destroy plants nearby. Offering to camouflage the tower indicates it is not natural to the area. She was offended by the suggestion that a color chart be used to

select the color of the blight. Many of the reasons people defend a place cannot be reduced or written in reports. There are powers in parks that can easily be destroyed by poor planning. Astoria is located in one of five counties in the U.S. chosen to participate in Way to Wellness, which is being launched for a second year. The program encourages doctors to prescribe physical activities by issuing vouchers to go to Astoria's parks for free. Astoria Parks and Recreation is very committed to the program. She thanked Parks employees and citizens who participated in Sunday's Citizen's Helping Improve Parks (CHIP-in) at Shively Park. She cleaned up litter in the park and parking area and cleaned the gated road around the park. A new resident asked her about the Chip-In. The tagged, ribboned, marked, spray painted plants and trees were visible and looked like vandalism. She questioned what would come next, like wind turbines and solar farms. Introducing anything unnatural would destroy the natural art of the Park.

Joe Di Bartolomeo, 1525 16<sup>th</sup> Street, Astoria, said his physical address is inside Shively Park. He has lived there for 23 years and his property abuts the Park, Evergreen Field, and the reservoir. He believed the tower would cast a dominant shadow on his yard that he would be able to see from his front steps. This is important to note with regard to adverse impacts. He received a notice about the proposal and called the City to request a map and mock up photographs. The documents were sent to him via email. He did not like the photographs and did not believe the tower would be appropriate; however, instead of opposing a cell phone tower, he tended to other things going on in his life. Mr. Zilli is a forester who knows about the height of trees. When Mr. Zilli pointed out the mistakes in the mock ups and all of the other issues, he felt as if he had been unintentionally misled. He understood many of the zoning codes were subjective and involved weighing relative interests; however, the code provision that deals with concealment says the Applicant must employ the best possible technology to conceal the tower. Grey and dark colored paint is not the best possible technology, but it might comply with other environmental land use regulations that talk about best practical measures. He did not believe employment of the best possible technology to conceal the tower had been shown. He believed City Council should be aware of the consideration of incremental change. The revised photographs are inaccurate because they do not include microwave towers and the hardware of other carriers. He understood there may be some evidence that people do not like, but the staff reports do not consider incremental change. Once a project like this starts, other similar projects will follow. The impact of this must be evaluated to some degree, but the staff report does not. The 150-foot tree is on the border of his property and he looks at it every day. It is definitely the tallest tree in the area and it sits behind the tower. The motives for a 150-foot tower are to allow additional carriers and expand coverage; however, the Code requires only what is necessary to maintain current coverage. He was concerned that so much of this process was done outside of the public eye. He read several references to memorandums written to the Friends of the Column, which indicated discussions about sites visits, alternatives, and Shively Park; however, the first public disclosure was in July.

Chris Farrar, 3023 Harrison Avenue, Astoria, said he opposed the permits when he originally heard about them and stated his opposition at a City Council meeting. He opposed putting a large unnatural structure in Astoria's most natural park. The River Trail offers trails, but those trails are a different experience from the trails at Shively Park. He goes to Shively Park frequently and has seen the orange paint. He did not understand why the paint had to be there because he believed it was unnecessary. There is disrespect for the Park, which is a special place. If Astoria allows special places to be degraded, visitors will begin to learn that Astoria is not so wonderful. He was appalled by the lack of honesty during this process and the fact that the public was kept out of the initial conversations. The public could have set a much better direction for staff and Council. He was sorry so much time has been spent and hoped Council would deny the permits and direct staff to rethink the entire project. He believed staff should start by looking at the real photos of the top half of the tower because that really matters. He could not believe Verizon had the gall to send revised photos that just show a pole. He wanted to see the antennas on the top and a view from a 45 degree angle. The tower is large and takes up the whole space. The Park will be an industrial site, not a natural park. At least at the Column, the view is of the Column, Young's Bay, or towards the bridge.

Doug Thompson, P.O. Box 411, Astoria, said he was speaking as a representative of the Lower Columbia Preservation Society (LCPS). He recently joined LCPS as a board member and has been directed by the Board to speak in favor of the appeals. Shively Park is on Astoria's local historic inventory as a historic landmark and is among the very first historic landmarks that were designated in about 1983. LCPS believes the proposed project violates the public trust in terms of appropriateness of Shively Park as a park and the Shively Park site as a historic landmark. This does not mean improvements can never be made to historic landmarks, but those improvements must be of proper scale and must fit the site and context of the neighborhood. This proposal for a 150-foot ordinary, everyday, run of the mill, cell tower violates all of that. City Council is being asked to approve



the diminishing of a local, public, historic asset for the sole benefit of a private, large, industrial, corporate entity. There is not a broad public purpose to that Verizon tower. The tower is part of a linked deal and the rest of the towers may not stand alone, but this tower diminishes a public asset for private gain. He was a City Councilor for over a decade and believed Council had three choices, 1) deny the appeal, 2) remand the permits, sending them back to the HLC and APC, or 3) vote in favor of the appeal. Too often, the City's default process is to start with City-owned properties when considering non-commercial new development. The City has made monetary and political investments in this project. Political capital will be spent if City Council approves the permits. This project will be known as this Council's legacy.

Dan Stephens, 1690 James Street, Astoria, said he lived close to the reservoir and the Park, which he uses weekly. The view of the tower will affect a lot of people because it can be seen from both sides of the trail that goes around the roadway. No one has mentioned the sound of the station. The station at the tower makes a buzzing and humming sound. Shively Park is a quiet and beautiful spot and the community does not need the tower. The Park is for the City of Astoria, not Verizon.

Mayor LaMear called for testimony opposed to the appeals, noting that opposing the appeals would be in favor of the permits granted by the HLC and APC. Seeing none, she called for a recess at 8:53 pm. The City Council meeting reconvened at 9:00 pm.

Mayor LaMear called for a presentation by the Applicant.

Councilor Price suggested Council discuss the possibility of postponing the ADC meeting because the appeals hearing was still ongoing, but many people had attended to speak about Heritage Square. Mayor LaMear confirmed that members of the audience who attended to speak about Heritage Square did not oppose postponing the ADC meeting and she agreed the City Council would run late.

Councilor Herzig believed people who spoke in favor of the appeals indicated on the signup sheet that they would be speaking in opposition to the appeals; however, he believed these people meant to indicate they opposed the cell phone tower. He was not sure how this would affect the public record.

Mike Connors, 520 SW Yamhill, Suite 235, Portland, Hathaway Kobak Connors Law Firm, said Flexcom was the consultant working on this project and a PowerPoint presentation with these comments:

- It is absolutely appropriate for City Council to consider the background of this project because it is part of the full context. The application must be judged based on approval criteria. As the governing body, City Council's duty is to look out for the public benefit, but other elements to the project are also important to consider. The decision cannot be based solely on public benefit. City Council is not obligated, nor did he believe it would be wise for City Council to completely disregard public benefit and make a decision in a vacuum. Therefore, he would present the background information he believed was relevant and should be considered by City Council.
  - The existing lattice tower at the Column holds equipment owned by Verizon, the City's emergency services equipment, and equipment owned by other users. In order for Verizon to provide 4G service, the tower needs to be upgraded so it can accommodate the necessary facilities, as well as the City's emergency services equipment. The Column site is exposed. The City's emergency services were completely out after a storm several years ago. There is no way to add any additional equipment to the tower, so a new lattice tower would need to be significantly taller than the existing tower.
  - Verizon did not initiate the idea that a site other than the Column be considered for the new tower. The City and Friends of the Column initiated this idea and approached Verizon about exploring other sites. His client's initial reaction was not very favorable because they understood this would take a lot of time, effort, and money to replace the Column site with multiple sites; however, in an attempt to be good stewards, good members of the community, and part of the solution, his client decided it would be beneficial to explore other sites. Verizon knew that moving forward with this process would add significant expenses because Verizon is paying for the construction of each site.
- Verizon began working with the City and the Friends to evaluate the alternative sites, which included a new tower at the Column. In addition to Verizon's technical consultants, Converge Communications also consulted on the project after being retained by the Friends and the City, acting as the City's expert consultant on this issue. An extensive alternative sites analysis identified potential sites that could accommodate various towers that could serve the coverage needs. The analysis was done using actual

drive studies in which a pole at the necessary height was erected at each site to determine whether the site and height of the pole provided the necessary coverage.

- This is typically done by Verizon prior to making a presentation to City Council to be evaluated as part of the public process; however, in this case, Converge, acting as a consultant on behalf of the City, was directly involved in that process. Converge helped identify alternative sites, evaluate the sites, rule out inappropriate sites, and determine the sites that had the potential to work.
- Since the original permit hearings, Verizon has provided additional evidence as part of the alternative sites analysis.
- Four sites were identified, the Reservoir Ridge site, Shively Park, Astor Hotel, and the Slavebolt {ed. Located off Youngs River Road near Tucker Creek Road} sites. Shively Park was evaluated again in more detail, working with City staff, Converge, and Friends of the Column to determine which location within the Park would be the most appropriate for this particular facility. There was a consensus among the group that the site chosen is the best site in the Park.
  - He displayed a map showing the existing Astoria HD site which is the Column site, the reservoir, the City park, and the Astor Hotel site. He also showed a close up photograph of the particular location within Shively Park proposed for the facility. The location is in the secluded area in the south western part of the Park.
- It is important to understand that at many of these hearings, there is an assumption that coverage only benefits the carrier; however, as the governing body of the City of Astoria, it is important that City Council ensure that their constituents have adequate cell phone coverage. The number of people using wireless and the uses for wireless are increasing. The various uses are an important part of today's modern world and City Council will want to ensure that Astoria's citizens have adequate coverage.
  - He displayed graphics showing current coverage provided by the Column site and coverage that will remain once the Column site is decommissioned. Simply removing the tower at the Column results in a significant difference in coverage, leaving virtually no coverage in portions of the City.
  - He displayed a graphic showing coverage that would be provided by the Shively Park site. The main purpose for this site will be to provide coverage to the southern part of the City, which will be shadowed from the coverage provided by the reservoir site due to the topography of the area.
  - He displayed a graphic of the network integration, showing the four sites and the coverage that will be provided once all four sites are operational. The result will be a significant upgrade to overall coverage of the city.
  - Mr. Zilli had stated increasing coverage was the only reason Verizon has proposed this project. This is not true. He reminded that the City and the Friends of the Column approached Verizon with this idea. Verizon is driving this idea because multiple sites are necessary to replace the Column site in order to provide comparable coverage for the entire City.
- He showed a map of the Park and indicated the location of the tower and access to the tower. The predominant use of this secluded area of the Park is Community Hall, which is further to the north. Verizon has tried to locate the tower as far from the historic structure as possible.
- Verizon has proposed that the tower be 150 feet tall because that is the minimum height necessary to provide coverage. The tower will be a monopole, not a lattice tower. Verizon is open to painting the pole any color City Council prefers; however, staff had proposed and Verizon agreed that the lower portion should be brown to blend in with the tree trunks surrounding the tower and the top portion should be grey to blend in with the sky.
  - One of the key reasons for selecting this site was the large number of mature trees in the immediate surrounding area that are between 120 and 145 feet tall. Verizon provided a tree survey. The surveyor visited the site, surveyed all of the significant trees, provided a survey, and then as part of the appeal, the surveyor revisited the site and confirmed that the survey was in fact accurate. Mr. Zilli has claimed the stated height of the trees is inaccurate, but he has not provided any evidence of this. City Council must make a decision based on evidence, not speculation.
  - He showed a photograph of the equipment area and tower and noted the entire leased area will be about 18 feet by 40 feet. The six-foot chain link fence surrounding the area will include painted slats. Staff has recommended the slats be dark green to blend in with surrounding area. A landscape buffer will be installed around the fencing to provide additional visual buffering. A small number of trees will be removed, but none are significant. The ground equipment will be painted as well.
  - To mitigate the visual impact, Verizon decided to use a monopole tower because a lattice tower has more of a visual impact. Also, the tower will be at the minimum height necessary to achieve Verizon's

coverage objective. He noted that one of the critical elements necessary to consider when evaluating a site is the height of the tower. In this case, Verizon used the drive test method, which is much more sophisticated than methods typically used for this type of application. He described the drive test method again and reminded that the test was done in conjunction with Converge.

- As part of the application, Verizon has provided a letter from the Engineer and supporting documentation that explains why Verizon needs this particular height. The height is necessary because of the height of the trees and the topography. Converge concurred with the engineer's analysis. Two radio frequency experts from two companies have provided evidence substantiated with explanations. Mr. Zilli has only referred to speculations. City Council must weigh these appeals against the evidence.
- The height of this tower is not being driven by the need for co-location. Verizon does not want co-location and Verizon is not a tower company. He understood the perception that other carriers on the tower would bring in additional revenue; however, that is more of a hassle than a benefit when the business is not a tower company. Verizon is providing for co-location because the Code requires it and this is typical. This minimizes the opportunity for each company to build a new tower for each facility. Other carriers have completely different networks and Verizon does not know what other networks need. There is no evidence to suggest Verizon needs a specific height to accommodate co-location, nor is there any benefit to Verizon from co-location.
  - Verizon must evaluate the structure of the tower to make sure it will accommodate other antennas. Co-locations affect the size of the base of the pole, not the height.
- He understood that the original photo simulations that Verizon provided included simulations within the Park, close ups, and outside the Park. There were no issues with the photo simulations of outside the Park. Verizon has provided a letter from the contractor that created the original simulations, which indicated it was very difficult for them to provide simulations showing the entire tower because of the density of trees and topography. Photo simulations are done from the perspective of pedestrians looking up and the contractor could not find an area where the entire tower would be visible. This resulted in a skewed photo simulation that made the tower look shorter than the trees.
  - The new photo simulations do not show the entire tower because the tower extends above the tree canopy. The height of the tower at 150 feet and the fact that the tower would extend above the trees was made absolutely clear at the APC and HLC hearings. He agreed the original photo simulations were inaccurate representations.
  - Verizon spoke with staff about providing new photo simulations so that the same issue would not occur again. The new perspectives were taken from angles recommended by staff, both within and outside the Park. He displayed the new photo simulations on the screen and described the details of each one. The simulations included a variety of colors to make it easy for City Council to choose which colors would be most appropriate; however, Verizon agreed with the colors recommended by staff.
- He responded to specific issues mentioned in the appeals, as follows:
  - Lack of transparency, bias, and failure to comply with Code
    - He understood that some people had opinions that were different from staff's opinions; however, disagreeing with recommendations or approaches does not warrant the assumption that bias occurred. Staff was simply doing their job. It might be reasonable to question the appropriateness of Shively Park as a stand-alone location; however, staff was taking direction from Council by evaluating the broad context of trying to provide a solution to the existing facility at the Column.
    - He did not understand the claim that there has been a lack of transparency and public involvement. Typically, all of the work building up to these hearings is done by staff, working out design issues and putting a proposal together. The public hearing process is the public's opportunity to comment. In this case, a series of public meetings and discussions about this process occurred in advance of the public hearings, where people had the ability to learn about what was going on, get involved, and have a voice in the process. In this case, there has been more public process than is typical.
    - There is no evidence of bias, which is the inability of a person to be objective when evaluating a particular situation. Staff recommending approval is an indication that staff believes the Applicant satisfied the criteria, not an indication of bias. There is no basis for bias by the City Council either. Council must judge the applications against policies and look out for the best interests of the City as a whole. City Council is simply evaluating the options to determine which option is in the best interest of the public overall.
    - City Attorney Henningsgaard did a good job of addressing conflict of interest and ex parte contact.

- The City had its own technical consultant working on this from the very beginning, which is not typical. Converge has confirmed Verizon's position. The consensus among the experts should give City Council additional comfort that this process was completed objectively and has been thoroughly evaluated. This is not an indication of bias.
- Historic design review
  - The standards apply to historic structures, not the Park as a whole. The only historic structure in the Park is the community hall. Verizon chose a site within the Park as far from the hall as possible, so the tower will not be visible from the structure. The tower will be 550 feet from the community hall.
    - Verizon understood the picnic area, which is not a historic structure, had significance. The tower will be 175 feet from the picnic area and not in a direct line of site.
    - In this case, the tower will have no impact on the historic structure. Even if the standards applied to the Park as a whole, the compatibility of the design must be consistent with the orientation of the structures. The area is a series of mature trees of a height and width similar to the monopole. Therefore, the design of the tower is consistent with the location and orientation of the surrounding trees.
- Visual impacts
  - He repeated the methods used by Verizon to mitigate against the visual impact of the tower and noted that several camouflage methods were evaluated, including alternative designs like faux trees and mono-pines.
    - Usually, faux trees are not as high as 150 feet. A steel pole with steel branches with equipment on top presents major structural challenges. The width of such a pole will be significantly wider than a monopole in order to bear the extra weight. The concrete footing would be massive. The faux tree branches coming off of the tower would require a substantial amount of tree trimming around the tower, both when the pole is constructed and when it is maintained. The entire area would have to be fenced off to comply with safety standards and prevent injuries should the steel branches fall.
    - The monopole has a slimmer profile, blends in with the existing trees, and requires a much smaller base and fenced off area. Stealth designs can blend in from afar, but one will know the tower is not a tree when standing in the Park or next to the facility.
  - The standard considers whether the tower creates a substantial adverse impact, not just a visual or adverse impact. The tower will be visible to a certain degree, but visibility of the tower will not create a substantial adverse impact because of the location in the Park, surrounding trees, and colors that will blend in.
    - The tower is a utility facility, so it is not possible to completely conceal the tower; however, the Applicant has taken steps to mitigate against the visual impact. The standard for concealing camouflage is to blend in with the surrounding natural and human made environment, which has been proposed. It will be reasonably difficult for the naked eye to detect the feature enclosing the area because it will be enclosed by mature trees. The Code specifically calls for the use of compatible building materials, colors, vegetation, or structural or topographic screening, which has been proposed.
    - Verizon has done as much as possible to comply with the Code and mitigate against visual impacts.
- Issues with the Variance to the maximum height limit
  - The Code allows Applicants to propose facilities higher than the limits allowed in the zoning district if various criteria are satisfied. The maximum height allowed in the zone of the proposed location is 45 feet. There are not many, if any, wireless communication towers that are 45-feet tall. Therefore, in almost every case, a variance will be necessary.
  - Standards require the use of concealment technology and demonstration that a higher height would provide the necessary service. He addressed both of these standards earlier in his presentation. The concealment methods Verizon is using are expressly recognized in the Code. Additionally, Verizon has provided extensive evidence, based on the drive test, to verify the height proposed is truly the minimum height necessary to satisfy Verizon's coverage objective. He understood these proposals create controversy, so Verizon would have proposed a lower height if it had been possible.
  - He reiterated that co-location is not driving the proposed height of the tower. Verizon has no basis for knowing what height the co-locators would need.

- He concluded that Verizon supports and agrees with the staff report and most of the recommended conditions of approval. Verizon believes Condition 5, the request to provide new photo simulations to the State Historic Preservation Office (SHPO), is unnecessary because SHPO did not review the original photo simulations. Therefore, providing the new simulations would not add or change anything that they reviewed before. Verizon was also concerned with Condition 4, which requires Verizon to maintain and replace all trees within the picnic area. The picnic area is outside of Verizon's site control. Verizon would take responsibility for a significant tree that fell. If a 50-foot tree were to be destroyed, it would not be possible to replace it with a similar height tree; however, Verizon would consider replacing fallen trees with trees that would grow over time.

Councilor Price wanted to know the width of the monopole.

Yogi Sandstrom, Verizon Construction Manager, 1510 SE Solomon Loop, Vancouver WA, said the width is determined by the ice load per the State of Oregon. In most cases, a 150-foot tower will have a base more than six feet in diameter; however, the width depends on the weight of the equipment on the tower and the foundation of the soil. Engineering of the site has not been done yet, so he could not confirm how much wider than six feet the base might be. Once the permits are approved, the engineering study can be done on the soil tests.

Councilor Herzig asked if there were any trees in Shively Park with a diameter of six feet. Mr. Sandstrom noted he was not the arborist, so he did not know. Mr. Connors added that the significant trees, like the 145-foot tall tree, had diameters close to six feet; however, he had not done actual measurements.

Councilor Price asked how large and deep the footing would be, noting Mr. Sandstrom believed a 38-foot deep core sample was taken at the site recently. He reminded he was not the engineer and the tower has not been designed yet; however, the footings are typically about eight feet deep, depending on the height of the tower. The smallest tower has a six foot deep footing. He confirmed the footing would be within the leased area.

Councilor Price asked Mr. Sandstrom if he was ever asked to provide schematics or drawings of the associated shed, generator, small building, and fencing. She also wanted to know if staff, the APC, or HLC ever saw such drawings. Mr. Sandstrom believed the fence would be wooden and the equipment would sit on a pad foundation. The equipment will include a backup generator and cabinets that support the antennas. Mr. Connors noted all of the information was submitted in the application. Councilor Herzig believed the schematic was shown during the Applicant's testimony.

Councilor Price asked that Slide 16.2 be displayed on the screen, which shows the pole at the edge of the pad; however, the slide did not show the fencing, foundation, any associated buildings, or a generator. She asked where these things would be located. She also asked for details about the fencing, landscaping, lighting, construction equipment, electricity, maintenance, and repairs.

Mr. Connors displayed a different slide and described where the equipment would be located in relation to the tower and road. The equipment would be surrounded by shrubs and a wooden fence with an engineered concrete retaining wall. He believed the top portion of the compound would be visible from the path, as shown on the slide. Mr. Sandstrom added that the fence would be surrounded by landscaping. The retaining wall would be the length of the leased area and about two or three feet high. He confirmed no lighting would be associated with the tower, but the cabinets will have interior lighting and lights on timers will allow technicians to work safely at night. Technicians would be working at the site very infrequently and the lights would only be on when they are working. No other security lighting will be necessary. A crane, the tower, a truck, the cabinets, and concrete trucks would need to be brought to the site during construction, which could take between one and two months. Flexcom was working with PP&L to run power and fiber underground along the roadway to the cabinets at the site. The power will be run from the existing power poles. The final design might include a new power pole in the right-of-way, but he has not received the final design yet. Flexcom already has a design and agreement with PP&L, but no fiber provider has been chosen yet. Mr. Connors explained that once the tower is up, a technical operations person will be assigned to the site. This person will make emergency repairs to the cabinets and equipment on the ground and do regular maintenance one or two times per month. These technicians drive Jeep Cherokees and he confirmed they would need to drive to the site to do maintenance and repairs.

Mayor LaMear called for testimony opposed to the appeal, noting that speaking in opposition to the appeal would be in support of the permits granted by the HLC and APC. There were none. She called for the Appellant's rebuttal.

Mr. Zilli said he has been a professional forester for over 20 years and he did measure several of the trees. He confirmed for Councilor Price that the diameter of the trees varied, but trees in the vicinity of the tower have a relatively small diameter. The hardwoods are approximately 18 to 22 inches in diameter and some conifers nearby are approximately 2 to 3 feet in diameter; however, there are no real big trees in the vicinity of the roadway. Once the area is cleared for the equipment enclosure, there will not be a tree within 30 feet of the tower. The plans stated the fence will be green powder coated chain link with lattice, which is a minor technicality. There are several differences of opinions on many aspects of this project and he respected Mr. Connors work; however, he discounted the comment that the City had its own contractor working on the project throughout the process because the City did not hire Converge; they were hired by the Friends. Although City staff was involved, there is no public record of Converge reporting to Council on the progress relative to Shively Park.

Mayor LaMear closed the public hearing at 9:58 pm and called for Council discussion and deliberation. She reminded City Council of its options, 1) uphold the HLC and APC decisions to approve the requests, 2) reverse the decisions of the HLC and APC and deny the requests, 3) remand the issues back to the HLC and APC for reconsideration, 4) continue this hearing to another day, or 5) tentatively approve or deny the requests pending new Findings of Fact.

City Manager Estes suggested Council consider each appeal individually even though the combined public hearing was for all appeals.

Councilor Nemlowill said she wanted Council to deliberate prior to discussing each appeal. She believed there had been a fatal flaw in the process, the photo simulations were deceptive, the tower was not compatible with the historic park, and substantial adverse impacts would result. She agreed with Mr. Zilli that the proposed tower does not conform to the Development Code and should be denied.

Councilors Herzig and Price agreed with Councilor Nemlowill.

Councilor Warr said he believed the entire package needed to be considered. The City has been trying to upgrade the emergency communications for years and this tower was a component of those upgrades. Denying this tower will have a much larger impact than denying a standalone tower. He believed denying this tower would be detrimental to the community. Therefore, he disagreed with Councilors Nemlowill, Herzig, and Price.

Mayor LaMear stated Council must also consider whether the design is compatible with the design of adjacent historic structures, etc. Councilor Warr responded that the HLC considered the evidence, spoke to all the parties that wanted to speak, and both the HLC and staff have recommended approval of the New Construction Permit. He agreed with the HLC and staff.

Councilor Price believed good emergency communications were important, but agreed there was a fatal flaw in the process. The minutes, Findings, and revised Findings all very clearly state that the HLC relied on inaccurate photographs to make a decision. The HLC and APC might have dug more deeply into the requests, but she did not believe there was any bias. She was not happy with the way the previous Council left these issues for the current Council, but this Council has done as much as possible in the open since then. The HLC did not have correct information. A statement made in April 2013 stated the tower would be about the same height as the trees, which is not true. If the HLC had looked at information like this more carefully, and at some of these drawings, their decision may have been different. However, the City still does not have proper drawings that show how the pole will look at Shively Park from within the Park. The Park is used most by people walking or with their dogs on the path. The open area is a beautiful space. When she visited the Park to do her due diligence for this hearing, she saw a couple taking photos of themselves from the steps across from the proposed tower site. She also took pictures and confirmed that there are no large trees in the area. Saying the tower will be in a forest where it will barely be seen is not correct. She did not believe the inaccurate information was intentional, but it is still inaccurate, which makes the HLC's decision incorrect.

Councilor Nemlowill concurred. She did not agree that the tower would be of an appropriate scale, nor did she agree with the other appeal issues. City Council is in a difficult position both as legislators and as quasi-judicial land use hearing officials; however, she believed if City Council remanded the HLC and APC's decisions, the issues would end up right back at City Council again on appeal.

Councilor Warr understood that Councilor Nemlowill believed the HLC and APC wanted the appeals to be passed. Councilor Nemlowill explained that as land use officers who have been presented new photo simulations, she believed City Council should make a decision. All of the documentation and testimony given at this hearing supports the idea that the project would have a substantial adverse impact. Too many changes to the staff report are needed to deny the requests at this meeting.

City Manager Estes said if any of the applications are denied, staff would ask Council to provide specific direction as to why they believed the criteria had not been met so that staff can present revised Findings at the next City Council meeting.

Mayor LaMear was concerned about the practicality of the entire project. The community does not want the tower at the Column or in Shively Park, so the City is running out of locations. The City must ensure that the citizens have cell phone coverage. She did not care how much Verizon made on this deal, but she did care about cell phone coverage around the City.

Councilor Nemlowill said she cared about cell phone coverage too, but that is not what City Council is evaluating. Council is evaluating a proposed cell tower at Shively and how it applies to the Development Code. Mayor LaMear said she understood what City Council was evaluating but questioned what options Council had.

Councilor Herzig noted that when Converge made their presentation to City Council, other possible locations for cell phone towers were listed. Converge said Shively Park was not the most convenient site, but it was the most practical.

City Attorney Henningsgaard stated that the Applicant, Verizon, only has to fail at meeting one critical criterion in order for City Council to approve the appeals; however, it would be very helpful to staff if Council could verbalize which parts of the appeal Verizon failed to meet. This will help staff create the revised Findings. He noted this discussion usually occurs prior to the vote.

### **Discussion of Appeal AP15-01 of New Construction NC15-03**

Councilor Nemlowill stated that Verizon did not meet the criteria for appropriateness of scale, specifically Development Code Section 6.070.B.1. The entire site of the Park is designated as a historic landmark in its entirety.

Councilor Price did not believe the tower at Shively Park should be linked with the tower at Reservoir Ridge. Even though separate applications were made, the hearings were conducted on the same night. The applications clearly stated the Reservoir Ridge site would not go forward without the Shively site, which has made it very difficult to consider the Shively site independently. If Verizon had just requested a tower at Shively Park just to improve coverage without being linked to the City's emergency communications, the request would have been denied. She did not know which Development Code Section this applied to, but this issue was stated in the revised Findings.

Councilor Herzig believed most people could not judge 150 feet and needed accurate photo simulations to consider. A cell phone tower in a historic park is not compatible, no matter how much camouflage is done. He believed Verizon had failed to demonstrate the tower would be compatible with the historic park. Councilor Nemlowill agreed, but suggested staff omit the language referring to adjacent vintage wooden structures because those structures were not historic.

Special Projects Planner Johnson confirmed she had enough detail to revise the Findings.

Councilor Price also wanted the Findings to state that the photos do not clearly show the visual impact. The Parks Board President stated in a meeting in August that the Parks Board trusts staff to give them accurate and educational information and pictures. The Findings also stated the APC relied on photographs; however, these

photographs were not accurate. Special Projects Planner Johnson confirmed which Findings Councilor Price was referring to.

**City Council Action:** Motion made by Councilor Nemlowill, seconded by Councilor Herzig to continue Appeal AP15-01 by Ron Zilli to the City Council meeting on February 1, 2016 at 7:00 pm in City Hall Council Chambers and direct staff to prepare revised Findings of Fact for approval of the appeal. Motion carried 3 to 2. Ayes: Councilors Price, Herzig, Nemlowill; Nays: Councilor Warr and Mayor LaMear.

### **Discussion of Appeal AP15-02 of Variance V15-03**

Councilor Nemlowill stated Development Code Section 15.065.B.2 states wireless communication facilities shall not create a substantial adverse impact on a view from any public park, historic property, etc. The proposed wireless communication facility will create a substantial adverse impact of the views within Shively Park from several locations.

Councilor Herzig said Development Code Section 15.065.B.6.c required the proposed structure and facility to use concealment technology. He did not believe brown and silver paint were adequate concealment technologies; therefore, Verizon did not meet the requirement for a variance.

Councilor Price added the photographs did not satisfy the visual impact requirements. The revised tree legend clearly indicated the trees were substantially lower than 150 feet and that the immediate area does not have many trees.

Councilor Nemlowill noted the tower would have a substantial adverse impact on the view from another historic structure, specifically the reservoir building.

Special Projects Planner Johnson confirmed she had enough information to revise the Findings.

**City Council Action:** Motion made by Councilor Nemlowill, seconded by Councilor Herzig to continue Appeal AP15-02 by Ron Zilli to the City Council meeting on February 1, 2016 at 7:00 pm in City Hall Council Chambers and direct staff to prepare revised Findings of Fact for approval of the appeal. Motion carried 3 to 2. Ayes: Councilors Price, Herzig, Nemlowill; Nays: Councilor Warr and Mayor LaMear.

### **Discussion of Appeal AP15-03 of Wireless Communication Facility WCF15-03**

Councilor Nemlowill stated Development Code Section 15.065 had not been met. She did not believe the paint and monopole were the best possible concealment technologies, nor did she believe that the wireless communication facility would be screened by the trees because it would extend so much higher than the trees into the skyline. The facility would be easy for the naked eye to detect.

Special Projects Planner Johnson confirmed that many of the issues with the New Construction permit could be carried over to the Variance and Wireless Communication Facility permit, including linking the sites, incompatibility, and adverse impacts.

Councilor Herzig said Development Code Section 12.030.B.2 had not been met. No full assessment has been done on the complete physical impacts of the construction and maintenance of the base of the tower or the incremental impacts of co-location. He believed this was another reason to deny the permit.

Special Projects Planner Johnson confirmed all of the issues had been covered and she had enough information to revise the Findings.

**City Council Action:** Motion made by Councilor Nemlowill, seconded by Councilor Herzig to continue Appeal AP15-03 by Ron Zilli to the City Council meeting on February 1, 2016 at 7:00 pm in City Hall Council Chambers and direct staff to prepare revised Findings of Fact for approval of the appeal. Motion carried 3 to 2. Ayes: Councilors Price, Herzig, Nemlowill; Nays: Councilor Warr and Mayor LaMear.



Councilor Herzig asked why Council was given the option to approve the appeals without being given the Findings necessary to take that action. City Manager Estes explained staff must revise the Findings. The motions were only to continue the items to be denied, not the hearings.

Councilor Herzig said Council was given five options, including the option to deny Verizon's requests; however, City Council did not really have that option. Instead, they had the option for a continuance to prepare Findings of Fact. He suggested staff refrain from giving the Council options it cannot use.

Councilor Nemlowill believed the option to approve the appeals was legitimate. Special Projects Planner Johnson could handwrite revised Findings to support Council's denials at this meeting and City Council could approve the revised Findings of Fact based on the hand written revisions; however, she believed evaluating a new document would be better, so the continuance makes more sense. City Manager Estes added that approving hand written revisions was easier for denials that were simpler to draft. This is done many times at APC meetings, but this case is more complex, so staff is requesting more time.

**NEW BUSINESS & MISCELLANEOUS, PUBLIC COMMENTS (NON-AGENDA)**

There was none.

**ADJOURNMENT**

There being no further business, the meeting was adjourned at 10:32 pm.

**ATTEST:**

**APPROVED:**

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

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

A work session of the Astoria Common Council was held at the above place at the hour of 9:00 am.

Councilors Present: Nemlowill, Herzig, Warr, Price, Mayor LaMear

Councilors Excused: None

Staff Present: City Manager Estes, Police Chief Johnston, Community Development Director Cronin, Planner Ferber, Parks and Recreation Director Cosby, Finance Director Brooks, Library Director Tucker and Public Works Director Cook. The meeting is recorded and will be transcribed by ABC Transcription Services, Inc.

Mayor LaMear explained this work session was scheduled because City Council must discuss certain topics publicly. This will provide everyone the opportunity to express their opinions so that City Council can come to a consensus or decide how to move forward. City Council wants to make progress and fully understand each Councilor's position. Therefore, public comments may or may not be part of the work session. Public comments can be given at a regular City Council meeting.

### **STRATEGIC PLAN**

City Manager Estes explained that at a previous work session, a discussion about implementing the City Council goal to develop a strategic plan indicated City Council wanted to review elements of the strategic planning process and wanted Staff to keep the process affordable. Since that work session, he has spoken with Marty Jaeksh, who recently completed a strategic plan for the Astoria School District and was recommended by Craig Hoppes, Astoria School District Superintendent. Considering Staff's workload with all of the City's ongoing projects, Staff recommends outside assistance with the strategic plan. After speaking with Mr. Jacques, he recommended hiring Mr. Jacques who could assist with all aspects of the strategic planning process. The fee for this fiscal year would be under \$10,000, which is within the City Manager's spending authority. However, he would like feedback from City Council about moving forward with a contract with Mr. Jacques. He presented City Council with Mr. Jacques's resume, briefly reviewing Mr. Jacques's employment history, strategic planning experience, and qualifications. He described the process Mr. Jacques would use to develop a strategic plan, which would take about six or seven months considering Staff's current work load, and first steps. He recommended City Council's goal setting sessions be replaced with strategic planning work sessions.

Councilor Warr confirmed that City Manager Estes believed Mr. Jacques would provide the City with the level of service Astoria needed and in a manner that City Council wanted. However, he believed that Mr. Jacques should make a short presentation to City Council first because Council also needs to be comfortable with the person directing the strategic planning process. Councilor Price agreed.

Councilor Nemlowill said she wanted to meet Mr. Jacques as well. She was concerned with the process, which she believed did not include enough public participation. While Mr. Jacques is qualified, she preferred to choose a consultant through the request for proposals (RFP) process because the person chosen will have a large influence on the outcome of the strategic plan. Hiring a consultant will be a big investment that will save the City money in the end because the plan will allow the City to prioritize and operate more efficiently. She was happy Staff had a viable candidate, but preferred choosing from a larger pool of candidates after City Council has interviewed them.

City Manager Estes noted that opportunities for public involvement are an option.

Councilor Herzig said Mr. Hoppas told him the school district was very happy with Mr. Jacques, who completed the process with community outreach for \$7,000. He believed City Council should move forward with Staff's recommendation.

Mayor LaMear said City Manager Estes has met with Mr. Jacques several times. Both City Manager Estes and Mr. Hoppas have recommended Mr. Jacques because his planning process ensures buy-in from all parties

involved and continuous evaluations of the final plan. Therefore, she was comfortable allowing Staff to move forward with their recommendation. She did not believe an RFP was necessary.

City Manager Estes stated he would schedule a work session with City Council and Mr. Jacques.

## **HERITAGE SQUARE**

City Manager Estes announced that Library Director Jane Tucker would retire on June 1, 2016.

Director Tucker said giving the City five months' notice of her retirement would allow time for continuity. She encouraged the City to use this change in Staff as an opportunity to reevaluate, reorganize, and make changes, especially since strategic planning is about to begin. There will be surprises along the way, but she hoped they would be good surprises. She said it has been a pleasure to work with City Manager Estes, Mayor LaMear, City Council, and her fellow department leaders, adding her decision to retire was not easy. Astoria's library is one of the oldest in the State, so the Library Director must be a steward and she has been a good steward.

Councilor Warr believed that before City Council could move forward with the development of Heritage Square, Council needed to come to a consensus on basic aspects of the project, including what would be developed, how the development would be funded, and how long development would take.

City Manager Estes confirmed for Councilor Price that the dirt work at Heritage Square was proceeding as scheduled.

Councilor Nemlowill wanted to address housing and library needs. She believed the library projects' ability to attract financiers was more important than the projects' costs and suggested Library Advisory Board conduct a study on expanding the library in its current location, compare that study with information on Heritage Square, and make a recommendation to City Council. Mayor LaMear explained the library has already done this. She reviewed the options for remaining in same location and why none were feasible. This has put City Council and the entire community in a quandary and she has given the issue a lot of thought. She distributed a document at the dais that listed pros and cons for four scenarios, 1) building a new library at Heritage Square, 2) renovating the current library building and using the Merwyn building, 3) renovating the current building and using the parking lot, and 4) renovating the current building and using the basement.

Councilor Herzig said the project must begin even before all of the money is raised. He agreed with Councilor Nemlowill that development of Heritage Square could address several issues, including the Safeway parking lot, housing, and the library.

Councilor Price said she was opposed to a bond to fill the funding gap for a library at Heritage Square. She preferred a plan with professional designs for use of the existing library space.

Council and Staff discussed renovating the current library building, as follows:

- Councilor Warr did not believe a library at Heritage Square or the Merwyn site was affordable. Previous plans for use of existing library building should be revisited. He strongly believed in expansion of the library in its current location, however the Flag Room would need to be altered and the library would close during construction.
- City Manager Estes explained why expansion of the library into the parking lot was not recommended by the Ruth Metz study.
- Director Tucker noted that in addition to construction costs, City Council should also consider labor costs and operation costs. She explained how a one level building would result in lower construction, labor, and operation costs. She also suggested City Council consider multiple age groups when discussing parking.
  - Library Staff is currently unable to supervise the Flag Room and mezzanine with 4.5 full time employees. Lines of sight in the building are important because cameras have not deterred bad behaviors. Walls would need to be removed in the current building in order to open up the lines of sight.
  - Councilor Warr believed extending the building to the sidewalk would accommodate the recommended 18,000 square feet. Meeting rooms could be located in the basement and the library could be on the main floor, which would be about 10,000 square feet. The cost savings of this option would provide funds for more library staff.

- Councilor Price did not believe the public would support a brand new library because of the cost. Therefore, the existing building should be renovated for less money and library staff increased.
  - Finance Director Brooks explained that personnel costs are an ongoing expense that tends to rise over time with the cost of living. Staffing costs are paid from property taxes, which are limited. This means the City has a finite amount of money it can spend on staff. Increasing library staff will only be possible if costs or staff in other departments are decreased.

Council and Staff discussed development at Heritage Square, as follows:

- Councilor Warr believed Heritage Square should accommodate parking and the Sunday Market, which is a huge economic driver for Astoria. He did not believe there was any other development that would benefit the city. While a public/private partnership would provide some good possibilities, construction costs in that area are too high to accommodate affordable housing.
  - Councilor Nemlowill reminded that Astoria needs all types of housing. It is important to focus on affordable housing for service workers. However, Columbia Memorial Hospital is the largest employer in Astoria. Healthcare workers are paid higher wages. Also, Coast Guard members receive housing subsidies. Housing on Heritage Square does not necessarily have to be workforce housing. The City has the ability to facilitate a certain type of development through incentives like property tax abatements or payment deferrals. Parking is important, but she did not believe Heritage Square could solve Astoria's parking needs. A parking study needs to be completed. If the block is developed, the Sunday Market could still be located at Heritage Square on a festival street. The site is not currently providing any benefit to Astoria, but housing would provide daily economic vitality to the downtown area. She wanted to find out if there were developers interested in building housing at Heritage Square.
  - Councilor Herzig said he has spoken to downtown merchants who say the Sunday Market is not a good economic driver. The market is moveable and has been located in other locations in the past. The city is not locked into a seasonal event, so keeping the parking lot open year-round is not a profitable use of the space.
- Councilor Price stated the community wants Heritage Square to be a plaza. Other city-owned lots in the downtown area could be used for housing. Public comments made during this most recent study of Heritage Square indicated the majority of the community has rejected building at Heritage Square and favored a public plaza as Phase 2 of this three-phase project. She reminded that the Garden of Surging Waves was Phase 1.
  - Councilor Nemlowill reminded that the Parks master planning process has received comments indicating more housing is desired and the City already has too much open space. Expanding the Garden of Surging Waves has never been vetted to the public.
  - Councilor Herzig explained the community began referring to the Safeway parking lot as Heritage Square when the community became upset that the Garden of Surging Waves would only represent one ethnicity. The name Heritage Square indicated future development would honor other ethnicities in the community, but no formal plans were made.
    - City Manager Estes noted that City Council did formally adopt the name Heritage Square.
  - Councilor Nemlowill asked how much it costs to maintain the Garden of Surging Waves. She also wanted to know how the Parks Department would maintain a public plaza at Heritage Square.
    - Director Cosby said traditionally, when new facilities are added, the maintenance of other facilities decreases so that all facilities can be maintained without adding additional resources. She excused herself to obtain information on the annual maintenance costs of the Garden of Surging Waves.

Mayor LaMear believed Heritage Square should be the community's square and that the library is the center of the community. She read a statement outlining the pros and cons of building a new library with housing at Heritage Square and renovating the existing library. Costs sound prohibitive; however, she believed the costs were broad and inflated. She recommended the City publish a request for proposals (RFP) to find out the real costs of each option, taking into consideration all of the pros and cons. If the existing library is renovated, she did not want the Merwyn to remain because it is causing damage to the library building. It would be short sighted to renovate the library without making a decision about the Merwyn building.

City Manager Estes said Staff has been working on cost estimates for both the Heritage Square proposal and renovation of the existing site. Director Cronin added that he would give the consultants more direction after receiving feedback from City Council during this work session. Once City Council agrees on their options, Staff will be able to get a cost estimate.

Councilor Herzig said he wanted to know the costs for the mixed-use library in Cornelius. He did not believe the cost estimates presented to City Council were realistic. City Manager Estes explained the mixed-use library in Cornelius is constructed of wood, which is a cheaper type of construction than concrete. The Cornelius library cost \$4.8 million and the housing is being funded by a Housing and Urban Development (HUD) grant for affordable senior housing. Cornelius has also received a Community Development Block Grant. The City of Astoria would not be eligible for this grant because the City is too wealthy. Taxpayers in Cornelius did not approve a bond for the project. Funds are still being raised for their new mixed-use library.

Councilor Nemlowill said she was concerned about the costs and asked if Staff believed the taxpayers would approve the Heritage Square site if it cost a lot more than the existing site.

Mayor LaMear believed it would be tough to sell any decision made by City Council because there are pros and cons to each option. Many developers have looked at the Merwyn building and no projects have been proposed. She questioned how long the City would allow the building to deteriorate in the name of preservation. The Merwyn is damaging both buildings next to it and would hold up the renovation of the existing library. The problem must be addressed.

Councilors Nemlowill and Warr agreed. Councilor Nemlowill was also concerned that a new library at Heritage Square would leave the existing library vacant. Mayor LaMear did not believe the building would remain vacant for more than a week. The structure is good and the building could be turned into affordable housing. She also believed the City could sell the building.

Councilor Price supported Mayor LaMear's recommendation to move forward with RFPs for each option. She also wanted local architects, designers, and developers to respond to the RFPs. Staff could provide cost estimates for bonds.

Director Cosby returned to the work session and noted the annual maintenance costs for the Garden of Surging Waves are about \$10,000 per year. She confirmed the garden was built with amenities that keep the required maintenance to a minimum. This garden is one of Astoria's most affordable parks to maintain.

Council and Staff discussed options for next steps:

- Director Cronin confirmed that Staff could send out RFPs for as many options as Council would like. However, the cost increases as the number of options increases. Staff would need clear direction from Council on the scope of each option they want to request proposals for. City Manager Estes suggested a contract amendment with an existing contractor instead of new RFPs because it would be faster and less expensive.
- Councilor Price wanted three or four proposals from developers that included their ideas for renovating the existing library. The developers would be told they had the option to make use of the parking lot and/or the Merwyn site.
  - Director Cronin reminded that Staff asked developers to join the last round of RFPs. Developers are not interested in this phase of the project because the project is not that far along yet. City Council must agree on next steps before developers will be interested. He confirmed for Councilor Price that Staff could request architectural designs.
  - Councilor Price agreed City Council needed to see some designs with cost estimates and timelines.
- Councilor Herzig suggested Staff ask the entities working on the Cornelius library to visit Astoria's potential sites and give their opinion. City Manager Estes believed Cornelius was using the design/build process. The construction company working on the Cornelius library is very busy right now because of the amount of construction currently going on in the Portland area. Councilor Herzig clarified he was not suggesting Astoria offer that company the job. He just wanted someone from the company to visit Astoria and give their opinion. City Manager Estes said Staff could ask, but the construction company is not able to begin working on the Cornelius library for another year and a half. Councilor Herzig believed it would be smart to tap into the expertise of a company that is constructing the same mixed-use library that Astoria is interested in.
- Councilor Warr said architectural designs are generally 10 percent or more of the total project costs. Therefore, architectural designs for a \$15 million project would be about \$1.5 million. He believed loose cost estimates were necessary at this point.
  - Councilor Price wanted to know exactly where everything would be placed in a new library. She believed designs were necessary to sell this project to the public.

- City Manager Estes explained that concept architectural drawings for both the exterior and interior for three sites would cost much more than the City has already spent. Staff believed three sets of drawings would cost between \$50,000 and \$70,000.
  - Councilor Herzig suggest the City use the drawings created by students studying architecture. City Manager Estes agreed those drawings were good for idea development. However, functionality will require drawings based on more realism.
- Councilor Price believed the cost for architectural drawings was appropriate. Councilor Warr agreed and asked how Council should proceed. Mayor LaMear believed design concepts and cost estimate would help City Council come to a consensus.
- Director Cronin suggested City Council agree on a set of criteria for Staff to use and create a vision statement for Staff to work toward. This will help Staff narrow down the options. The consultant team has been asking Staff what criteria they should be using, but Staff does not have the answer yet. City Manager Estes explained that Staff would have to draft a set of criteria for Council to approve.
  - Councilor Herzig suggested Staff use the criteria listed in the Metz study.

Mayor LaMear wanted architectural drawing for four options, 1) Heritage Square, 2) renovating the existing library and the Merwyn buildings, 3) renovating the existing library by expanding into the parking lot, and 4) renovating the existing library, including the basement. Councilor Warr believed both the parking lot and basement would be needed to achieve 18,000 square feet. Mayor LaMear believed meeting rooms in the basement would be difficult.

Councilor Nemlowill said there is no real indication that renovating the existing library would cost less than building a new library at Heritage Square. Some Councilors are skeptical of the cost estimates for Heritage Square, so the Council is working with numbers it does not believe to be credible.

Mayor LaMear noted that comparing the costs of renovating versus building new is like comparing apples to oranges because a new library at Heritage Square would include housing.

Councilor Nemlowill believed both sites could work well. However, she wanted to know more about the options for renovating the existing library and a critique of the cost estimate for the development of Heritage Square. She also wanted to know if each project would be dependent on taxpayers. She suggested the Finance Department develop cost estimates for each option. City Manager Estes explained that the Finance Staff are not architectural cost estimators and would not be able to determine the costs of things like an HVAC system. However, the Finance Department could consider how the Community Development's costs estimates might be funded.

Councilor Warr added that the Library Foundation is committed to raising a large part of the funding. Councilor Nemlowill said she had spoken to David Oser, who indicated most foundations raise money for materials and operations, but they are not the bedrock for construction fundraisers. However, raising small amounts of money from many people shows the support necessary to attract larger donations. City Council needs to know what the funding package would look like. Councilor Warr agreed and suggested Council direct Staff to move forward with two options, a new mixed-use library at Heritage Square and renovating the existing library.

Mayor LaMear did not believe the existing library should be renovated without a plan for the Merwyn. City Manager Estes confirmed that demolition of the Merwyn would cost \$150,000 plus the purchase price of the property, which is unknown. Councilor Warr suggested protection of surrounding buildings be added to the nuisance law. This would lower the purchase price of the Merwyn. Council and Staff briefly discussed the history of the Merwyn property and the owner's attempt to demolish the building.

Councilor Price suggested the RFPs request proposals for renovating the existing library, expanding it to as close to 18,000 square feet as possible, and allow the architect or decide whether that includes the parking lot and/or basement. Councilor Warr agreed. He believed two RFPs were appropriate because of the cost.

Councilor Herzig reminded that the existing library is not ADA compliant and he wanted the designs to include ADA accommodations.

City Council discussed their concerns and preferences for next steps with Staff as follows:

- Director Cronin explained that City Council has two options, a contract amendment with the current consultant or RFPs to find a new consultant. The RFP process will take much longer than a contract

amendment because Staff would have to develop a scope, Council would need to authorize it, and then Staff would need to evaluate the proposals before choosing the new consultant. This will take about two or three months.

- Councilor Price wanted to move forward with the RFP process because she wanted local architects and designers to have the opportunity to weigh in. Director Cronin noted the current consultant team includes a local consultant. Councilor Price believed that local consultant had very little ability to give input. She believed a local consultant team should lead the project. She preferred a fresh start.
- Mayor LaMear wanted to know what the existing consultant team would be asked to do if Council approved a contract amendment. Director Cronin explained the team would expand on the work it has already completed to answer more questions for Council. All options will be approved by City Council before Staff directs the consultant to begin working on them. He could present those options to Council for approval at the first City Council meeting in February.
  - Councilor Price said she did not have any specific objections to the work done by the existing consultant team. However, other options should be explored by local professionals who have indicated they are interested in redeveloping the area. She believed it was appropriate to ask a new consultant to refine the work done by the existing consultant. She wanted designs for the existing building to be completed by a new consultant.
  - Councilor Herzig added he did not have a positive impression of the consultant team when they made a presentation to City Council. His impression was not a reflection on Staff, but he believed the presentation was unfocused and included extraneous material that distracted from the essence of the project. He was not satisfied with the consultant's refusal to make a recommendation because the advisory committee vetoed their proposal. Also, the cost estimates were inflated and unrealistic.
  - Director Cook explained the cost estimates were high because sidewalks would need to be replaced and retaining walls would have to be built in order to fill the hole. Most people do not realize the east parking lot is hollow. When the Garden of Surging Waves was built, the necessary fill work and replacement of the sidewalks cost almost \$300,000. Councilor Herzig said the consultants presented cost estimates for streetscape designs, not building above empty space. He did not believe the consultants were familiar with the topography of the site, nor did they have the ability to assess the real costs of the site. Director Cook confirmed that the Engineering Department did discuss replacing sidewalks and building retaining walls with the consultant team.

Councilor Nemlowill wanted the cost estimate for a mixed-use library at Heritage Square to be refined and wanted more information about costs to renovate the current library building, purchasing and demolishing the Merwyn site, and expanding the existing building into the parking lot. She also wanted to know how each option would be funded. City Manager Estes confirmed the Finance Department could provide funding package details for each scenario. However, at least two Councilors have indicated they want a fresh look at the options with the understanding that it will take more time. If Council wants RFPs, Staff would develop a scope, present the scope to City Council in February for approval, and then request proposals.

Councilor Price wanted the scope to include the option of using the Merwyn building. City Manager Estes reminded that Council needed to agree on which options should be included in the RFPs. He reviewed all of the options that had been mentioned and asked how many options should be included. Councilor Price wanted RFPs for all options.

Mayor LaMear did not agree that use of the Merwyn building should be considered. The library would not be able to use the bottom floor of the Merwyn building but an entrance on that floor would be necessary. Councilor Price said she had not seen evidence of this.

Councilor Warr said the cost estimates for incorporating the Merwyn into the library indicated a higher per-foot cost versus options that did not include the Merwyn. The building is very deteriorated and has been sitting vacant for 20-some years. Councilor Price said she was not particularly attached to the building. She just wanted people to think freely about the options. Councilor Warr explained the people who must make the decision, City Council, must begin focusing on which decision should be made. Otherwise, this conversation will continue into the future. Councilor Price believed the decision should be based on designs and money. She could not make a decision because she had not seen any designs.

Councilor Warr noted the design concepts included many different facets. He asked how confident Staff was about the cost estimates for each facet. Director Cronin responded that the numbers are good, but the 40

percent contingency is quite high. This makes the total amount high as well. If the contingency can be reduced and actual costs can be determined, the total cost will decrease. Costs will also decrease Council makes decisions about where to spend money. Eliminating the streetscape and resolving parking issues through other means will bring down the costs of this project. He confirmed that he could show City Council how eliminating certain options would impact the total project costs and get the cost estimate down to a reasonable amount.

City Manager Estes believed, and Mayor LaMear agreed, this exercise should be completed before RFPs are issued. This would allow the new contractor to understand exactly what City Council wants to focus on at Heritage Square. Councilor Nemlowill liked the idea of having the new contractor work from the cost estimate that has already been completed. Councilor Warr believed City Council would be in a good position if they can refine the numbers and agree on what is acceptable for Heritage Square, even if there is still disagreement about the appropriateness of the site itself. In order to get a valid comparison, it might be a good idea to get a rough estimate on the existing library building as well.

Councilor Nemlowill asked if it was appropriate to ask Walker Macy to provide cost estimates for the existing building. Councilor Warr was not particularly impressed with Walker Macy. He heard from meeting attendees that their presentation included irrelevant details. The City wanted a final figure on the housing above the library. However, he was told that most people at the meeting were not be interested in putting housing above a library at Heritage Square. City Manager Estes said the consultant team was also trying to respond to ideas submitted by the citizen task force. If there are aspects of the report that City Council does not believe are important, Staff can prioritize and refine the cost estimates. Director Cronin added that at the next Development Commission meeting, Staff could recommend specific components that should be deleted from Walker Macy's report.

Mayor LaMear asked what each Councilor thought about underground parking. Councilor Nemlowill said underground parking is nice, but she has always heard that it is cost prohibitive. She believed a work session to discuss cost estimates could take an hour and the next Development Commission meeting already has a full agenda.

Councilor Price suggested the City consider housing on Heritage Square without a library. If the existing library is renovated, the City will still need to decide what to do with Heritage Square. This option could also be explored through the RFP process. Councilor Nemlowill agreed. Councilor Warr wanted to keep the discussion about the library and decide whether to build new or renovate.

City Manager Estes suggested adding the review of the Walker Macy report to the agenda for the next Development Commission meeting. Depending on how the meeting goes, the Commission could decide to table the discussion to another meeting or take action. Staff does not know how long the other agenda items will take.

- He confirmed that City Council has directed Staff to review the cost estimates developed by Walker Macy with the Development Commission and remove line items that Commissioners believe should not be part of a potential library housing project. Staff will then develop a new scope of work that will be presented to City Council for authorization and be used to hire new consultant services. The scope of work will include evaluations of the Heritage Square site, renovation of the library building with an expansion into the parking lot, renovation of the library and its basement, and renovation of the library assuming a new building on the Merwyn site.

Councilor Warr believed housing on Heritage Square should be considered, but not as part of this RFP process. The City is currently trying to build or renovate the library and the focus should remain narrowed to that goal. Councilor Price wanted something done with Heritage Square and she believed Council would be hesitant to move forward with plans for Heritage Square until they know whether housing at Heritage Square is a possibility. This means the fence and hole would remain through one more summer. Councilor Warr said he would not object to the desire of the Council.

Councilor Nemlowill asked if the Heritage Square site needed to be researched again by a new consultant after City Council refines Walker Macy's cost estimates. She believed this would be a waste. Councilor Warr agreed and said refining the existing cost estimates will help City Council make a final decision. City Manager Estes suggested the new consultant consider Walker Macy's cost estimate so that the same methodologies can be used and a fair comparison can be made. Director Cronin agreed.



Councilor Nemlowill suggested the City ask for requests for interest (RFI) instead of RFPs. Director Cronin reminded that the project is still in the feasibility study phase. That is why Staff is hiring consultants to help answer feasibility questions. Typically, the feasibility of a project is complete before developers get involved. Once City Council agrees on which option is the most feasible, Staff will begin the RFI process. Councilor Nemlowill believed the level of developer interest could impact City Council's decision. City Manger Estes explained that a developer team needs to know that City Council had decided on a specific option. Developers will not prepare RFIs for projects that are not supported by City Council. Director Cronin offered to get feedback from developers to gauge interest.

Councilor Nemlowill believed a portion of the property should be sold to get it back on the tax rolls and the housing need should be addressed; however, that may convolute the process of trying to build a new library.

Director Cronin agreed with Councilor Warr that the focus should remain on the library. Other City Council Goals, like the housing needs, may fall into place or Staff can address those goals in other ways. Mayor LaMear and Councilor Herzig also agreed the focus should be on the library.

Mayor LaMear discussed vandalism of the outdoor book drop bins, noting the need for them to be located indoors. Trucks need to be able to deliver new books and ADA parking needs to be available.

City Manager Estes and Director Cronin confirmed they had received clear direction from City Council. Staff would review Walker Macy's cost estimates with the Development Commission at their next meeting on Tuesday, January 19, 2016.

Mayor LaMear invited the public to speak about the library at the next City Council meeting, when City Council has more clarity about how to move forward.

Unidentified Speaker said the library was designed by Brown and Brown Architects and built by a local contractor. It would be great if the City could have the library built by local professionals. Also, the City should not forget its heritage at Heritage Square.

**ADJOURNMENT**

There being no further business, the meeting was adjourned at 11:00 am.

**ATTEST:**

**APPROVED:**

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

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



## CITY OF ASTORIA

Founded 1811 • Incorporated 1856

February 5, 2016

### MEMORANDUM

TO: MAYOR AND CITY COUNCIL

FROM:  BRETT ESTES, CITY MANAGER

SUBJECT: INTERGOVERNMENTAL AGREEMENT (IGA) BETWEEN THE CITIES OF ASTORIA, SEASIDE AND WARRENTON FOR COOPERATION IN THE PROVISION OF LIBRARY SERVICES

### DISCUSSION/ANALYSIS

Since 2010, the City of Astoria has participated in Libraries ROCC! Rural Outreach to Clatsop County. Partners and collaborators include the school districts of Astoria, Jewell, Knappa, Seaside and Warrenton, the Northwest Regional Education Service District, Clatsop County, and the public libraries of Astoria, Seaside, and Warrenton. Libraries ROCC activities include library cards for all children ages birth to nineteen, a collaborative countywide summer reading program, and courier service between the Seaside, Warrenton and Astoria libraries.

The Library Directors of the Seaside, Warrenton and Astoria libraries leverage the work of the past six years by seeking community and corporate donations to support ROCC library cards and summer programs and to establish an endowment fund. The financial impact of this IGA for the City of Astoria is estimated at \$850 a year for mileage and staff time to continue courier service. Courier service enables the libraries to continue sharing collections. This cost may be reduced if a grant paid Outreach Coordinator is able to assist with courier service.

The current IGA expires April 30, 2016. Attached is a new IGA to continue participation. Any party may discontinue participation with a 90 day notice. This IGA is to be reconsidered in five years and has been reviewed and approved as to form by City Attorney Henningsgaard.

### RECOMMENDATION

It is recommended that Council approve and authorize the City Manager and Mayor to sign the Intergovernmental Agreement between the Cities of Astoria, Seaside and Warrenton for Cooperation in the Provision of Library Services.

Submitted by:

  
Jane Tucker, Library Director

# **INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITIES OF ASTORIA, SEASIDE AND WARRENTON FOR COOPERATION IN THE PROVISION OF LIBRARY SERVICES**

This Memorandum of Understanding (Agreement) is between the Cities of Astoria, Seaside and Warrenton, municipal corporations of the State of Oregon. Each city has a library and by this Agreement will cooperate in the provision of library services within Clatsop County. This Agreement is effective on May 1, 2016.

## **Findings**

- A. The cities each have the legal authority to enter into this Agreement.
- B. The cities have legal authority under ORS Ch. 190, to enter agreements for intergovernmental cooperation for the performance of any function that one party to the agreement has the authority to perform.
- C. The cities each have Library Directors who are authorized to implement and administer this Agreement.
- D. The cities each deem it in the best interests of each governmental entity to cooperate in the provision of library services according to the following terms and conditions:

## **Agreement**

1. There will be courier services amongst the three cities. Inter-library courier services will continue and beginning on May 1, 2016 the costs of the service will be shared equally by the three cities.
2. The cities will provide for interlibrary catalog access. Each city will maintain its own system and automated interconnectivity with the other libraries will be maintained by each city. The libraries will strive to use the same system for the sake of efficiency.
3. Patrons of any of the three libraries will have the right to borrow materials from all three libraries' circulation collections. Each city will maintain its own collections and will endeavor to continue to fund library services at no less than the current level. Over the first three-years of this Agreement data will be accumulated and the cities will strive for parity of services.
4. The cities will collaboratively provide library cards for children age 0-19 in Clatsop County.

5. The cities will jointly plan and operate a summer reading and library outreach program for children in Clatsop County.

6. Cities agree to strive for the establishment of an independent foundation whose purpose is the on-going funding support of the reading outreach program.

7. The cities agree that the Friends of the Seaside Library (FOSL) will be the fiscal agent for donations designated for the reading outreach program, provided the FOSL is willing. The cities may agree to change the fiscal agent designation.

8. This Agreement will be administrated and implemented by the Library Director of each city.

9. The cities will annually review this Agreement and perform a cost analysis of the library services covered.

10. Any city may terminate this Agreement with no less than 90-day written notice to each other city.

11. Notices under this Agreement may only be given in writing by personal delivery or mailing, postage prepaid as certified mail, to the addresses below, or such other address as provided by any party. Any notice so addressed and mailed is deemed received five days after date postmarked.

City of Astoria:      Library Director.  
Astoria, OR 97103

City of Seaside:      Library Director  
Seaside, OR 97138

City of Warrenton      Library Director  
Warrenton, OR 97146

11 As permitted by the Oregon Tort Claims Act, ORS 30.260 through 30.300, and the Oregon Constitution each city agrees to hold harmless, defend, and indemnify each other, including their officers, agents, and employees, against all claims, demands, actions, and suits (including attorney fees and costs) arising from the indemnitor's performance of this Agreement where the loss or claim is attributable to the negligent acts or omissions of that party. Each city is responsible for the acts, omissions, or negligence of its own officers, employees, and agents.

12. Each city agrees to maintain insurance levels, or self-insurance in accordance with ORS 30.282, for the duration of this Agreement at levels necessary to protect against public body liability as specified in ORS 30.270.

13. Each city agrees to give the other cities immediate written notice of any legal action filed or any claim made against it that may result in litigation in any way related to this Agreement.

14. This Agreement may be amended by mutual agreement of the three cities. Any amendment must be in writing, must refer specifically to this Agreement, and becomes effective when executed by all three cities.

15. This document contains the entire agreement between the cities on this subject.

16. If any one or more of the provisions of this Agreement is invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of its remaining provisions is not affected or impaired.

17. By signature below, the cities certify that the individuals listed in this document as representatives are authorized to act to bind their city to this Agreement.

18. This Agreement may be executed in counterparts and any one of which will constitute the agreement between the cities.

The cities have executed this Agreement by the dates set forth below.

City of Astoria

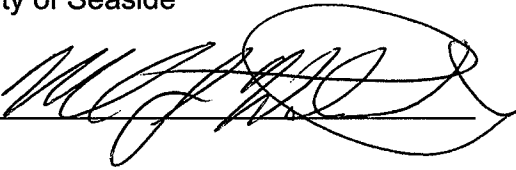
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Arline LaMear, Mayor

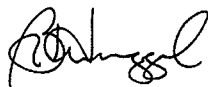
\_\_\_\_\_  
Brett Estes, City Manager

City of Warrenton

\_\_\_\_\_

City of Seaside

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**CITY OF ASTORIA**  
Founded 1811 • Incorporated 1856

February 8, 2016

**M E M O R A N D U M**

**TO:** MAYOR AND CITY COUNCIL

**FROM:**  BRETT ESTES, CITY MANAGER

**SUBJECT:** ASTORIA SENIOR CENTER RENOVATION PROJECT CONSTRUCTION  
CONTRACT AMENDMENT #5

**DISCUSSION/ANALYSIS**

In July of 2015 the City Council approved a contract with Skyward Construction, Inc., for the Astoria Senior Center Renovation Project in the amount of \$1,455,157.00. A construction contingency of approximately 10% of the construction contract was set aside outside of the construction contract for any unforeseen circumstances that may arise during the project.

As is with any remodeling project of the building circa 1947 it is anticipated unforeseen items will emerge during the renovation process. Prior to this current contract amendment #5, the previously approved contract amendments #1, #2, #3 and #4 were in the amount of \$37,539.09. Contract amendment #5 is related to the need to (1) replace the interior wood trim at the main entrance, repair the main entrance door lock, install power and an override switch for the main entrance door, install shelving in the coat and janitor closets, refinish the entire existing concrete interior North wall to receive the final paint at a combined cost of \$4,818.95; (2) furnish and install casework cabinet locks at the Senior Center Manager's request to secure the cabinets at a cost of \$1,467.11; (3) furnish and install service lights in the basement at a cost of \$1,787.70. To date Contract Amendments #1, #2, #3, #4 and #5 would utilize \$42,315.14 of the \$145,515.70 of the contingency.

**RECOMMENDATION**

It is recommended that the City Council approve the contract amendment #5 in the amount of \$8,073.76 which will amend the construction contract for the Astoria Senior Center Renovation Project with Skyward Construction, Inc. in the total amount of \$1,500,769.85.

Prepared By:   
Al Jaques, Project Construction Manager



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## CONTRACT AMENDMENT #5

DATE: February 8, 2016  
PROJECT: Astoria Senior Center Renovation  
CONTRACTOR: Skyward Construction Inc.

The purpose of this contract amendment is to account for work not covered in the bid items. This contract amendment amount constitutes total compensation for the change and the cumulative effect on the project.

Item	Description	Cost
	Original Contract Amount	\$1,455,157.00
1	Contract Amendment No.1	\$9,680.99
2	Contract Amendment No. 2	\$17,250.00
3	Contract Amendment No. 3	\$4,468.39
4	Contract Amendment No. 4	\$6,139.71
<b>5</b>	<b>Contract Amendment No. 5</b>	<b>\$8,073.76</b>
	Contract Sum to Date	\$1,500,769.85

This Contract Amendment becomes part of and in conformance with the existing contract.

CONTRACT AMENDMENT APPROVED BY:


\_\_\_\_\_  
Mayor Date

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



February 8, 2016

**MEMORANDUM**

TO: MAYOR AND CITY COUNCIL  
FROM:  BRETT ESTES, CITY MANAGER  
SUBJECT: **AUTHORIZATION TO PURCHASE PICKUP TRUCK**


**DISCUSSION/ANALYSIS**

The Public Works Department has requested a quote for the purchase of a Ford F-150 4x4 pickup to replace two older Jeep vehicles currently used by the City Public Works Director and City Engineer. Public Works Administration and Engineering Division currently have four older Jeeps in their fleet. The two newest of the four will be retained for use by the Engineering Technicians and the new pickup truck will replace the two oldest jeeps which will be surplused. The Public Works Director and City Engineer will share the new vehicle. The sharing will reduce annual maintenance costs and will also provide a vehicle which seats 6 people. Currently, the Department rents a large vehicle when visitors are taken for onsite-visits or six or more staff members must attend meetings out of the area. The new vehicle will eliminate the need to rent a vehicle for such purposes.

A quote was obtained from the current State purchasing contractor for the most affordable vehicle that would meet our Department's needs. The State purchasing program is a program in which all Oregon dealers are eligible to participate. The State purchasing contractor came back with a price of \$26,996.00 from Power Ford. The Manufacturers Suggested Retail Price on the pickup is \$37,650.00. Funds have been budgeted in the Public Works Improvement Fund for this purchase.

**RECOMMENDATION**

It is recommended Council approve the purchase of one Ford F-150 4x4 pickup from Power Ford Lincoln for \$26,996.00.

Submitted By:   
Ken P. Cook, Public Works Director

Prepared By:   
Jeff Harrington, City Engineer



City of Astoria  
 Ken - Maintenance  
 Factory Order.

Prepared By:  
 administrator

Power Ford Lincoln  
 P.O. Box 360  
 Newport, Or. 97365

2016 Fleet/Non-Retail Ford F-150 4WD SuperCrew 145" XL W1E

WINDOW STICKER

2016 Ford F-150 4WD SuperCrew 145" XL  
 3.5 L/213 CID Regular Unleaded V-6  
 \* 6-Speed Automatic w/OD

Option 85A shown at  
 bottom if interested.  
 Don

CODE	MODEL	MSRP
W1E	2016 Ford F-150 4WD SuperCrew 145" XL	\$36,455.00
<b>OPTIONS</b>		
998	ENGINE: 3.5L V6 TI-VCT FFV	\$0.00
446	TRANSMISSION: ELECTRONIC 6-SPEED AUTOMATIC	\$0.00
100A	EQUIPMENT GROUP 100A BASE	\$0.00
X26	3.73 AXLE RATIO	\$0.00
64C	WHEELS: 17" SILVER STEEL	\$0.00
	TIRES: P265/70R17 OWL A/T	\$0.00
YZ	OXFORD WHITE	\$0.00
	STANDARD PAINT	\$0.00
AG	MEDIUM EARTH GRAY, VINYL 40/20/40 FRONT SEAT	\$0.00
<b>SUBTOTAL</b>		<b>\$36,455.00</b>
	Advert/Adjustments	\$0.00
	Destination Charge	\$1,195.00
<b>TOTAL PRICE</b>		<b>\$37,650.00</b>

Est City: 17.00 mpg  
 Est Highway: 23.00 mpg  
 Est Highway Cruising Range: 529.00 mi

\$26,996.00 Feb Astoria  
 Don Kesinger 2/5/16

ADDITIONAL EQUIPMENT

85A	XL POWER EQUIPMENT GROUP -inc: Power Glass Sideview Mirrors w/Black Skull Caps, manual-folding, Power Door Locks, flip key and integrated key transmitter keyless-entry (includes Autolock), Illuminated Entry, Power Front & Rear Windows, Perimeter Alarm, Power Tailgate Lock, MyKey Owner controls feature w/100A, REQUIRES valid FIN code. *GROSS* (With the selection of 53C, requires XL Power Equipment Group savings) (With the selection of 53A, requires XL Power Equipment Group savings)	\$1,057.00	<del>\$1,170.00</del>
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OPTIONS TOTAL

Power Equipment available as an option - Add to bid if desired **Add \$1,057.00** ~~\$1,170.00~~

Prepared By:  
administrator

## 2016 Fleet/Non-Retail Ford F-150 4WD SuperCrew 145" XL W1E

### **STANDARD EQUIPMENT**

STANDARD EQUIPMENT - 2016 Fleet/Non-Retail W1E 4WD SuperCrew 145" XL

#### ENTERTAINMENT

- Radio: AM/FM Stereo w/6 Speakers -inc: auxiliary audio input jack (not available w/SYNC)
- Radio w/Aux Audio Input Jack
- Fixed Antenna
- 2 LCD Monitors In The Front

Report content is based on current data version referenced. Any performance-related calculations are offered solely as guidelines. Actual unit performance will depend on your operating conditions.

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## 2016 Fleet/Non-Retail Ford F-150 4WD SuperCrew 145" XL W1E

### **STANDARD EQUIPMENT**

#### STANDARD EQUIPMENT - 2016 Fleet/Non-Retail W1E 4WD SuperCrew 145" XL

##### *SAFETY*

- Electronic Stability Control (ESC) And Roll Stability Control (RSC)
- ABS And Driveline Traction Control
- Side Impact Beams
- Dual Stage Driver And Passenger Seat-Mounted Side Airbags
- Tire Specific Low Tire Pressure Warning
- Dual Stage Driver And Passenger Front Airbags
- Airbag Occupancy Sensor
- Safety Canopy System Curtain 1st And 2nd Row Airbags
- Outboard Front Lap And Shoulder Safety Belts -inc: Rear Center 3 Point, Height Adjusters and Pretensioners
- Rear Child Safety Locks

Report content is based on current data version referenced. Any performance-related calculations are offered solely as guidelines. Actual unit performance will depend on your operating conditions.

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## 2016 Fleet/Non-Retail Ford F-150 4WD SuperCrew 145" XL W1E

### **STANDARD EQUIPMENT**

#### STANDARD EQUIPMENT - 2016 Fleet/Non-Retail W1E 4WD SuperCrew 145" XL

##### MECHANICAL

- Engine: 3.5L V6 Ti-VCT FFV
- Transmission: Electronic 6-Speed Automatic -inc: tow/haul mode
- 3.73 Axle Ratio
- GVWR: 6,350 lbs Payload Package
- Electronic Transfer Case
- Part-Time Four-Wheel Drive
- 70-Amp/Hr 610CCA Maintenance-Free Battery w/Run Down Protection
- 200 Amp Alternator
- Towing w/Harness and Trailer Sway Control
- 1590# Maximum Payload
- Gas-Pressurized Shock Absorbers
- Front Anti-Roll Bar
- Electric Power-Assist Speed-Sensing Steering
- 23 Gal. Fuel Tank
- Single Stainless Steel Exhaust
- Auto Locking Hubs
- Double Wishbone Front Suspension w/Coil Springs
- Leaf Rear Suspension w/Leaf Springs
- 4-Wheel Disc Brakes w/4-Wheel ABS, Front And Rear Vented Discs, Hill Hold Control and Electric Parking Brake

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Customer File:

Prepared By:  
administrator

## 2016 Fleet/Non-Retail Ford F-150 4WD SuperCrew 145" XL W1E

### **STANDARD EQUIPMENT**

STANDARD EQUIPMENT - 2016 Fleet/Non-Retail W1E 4WD SuperCrew 145" XL

- Manual 1st Row Windows
- Outside Temp Gauge
- Analog Display
- Front Center Armrest
- Manual Adjustable Front Head Restraints and Manual Adjustable Rear Head Restraints
- Securilock Anti-Theft Ignition (pats) Engine Immobilizer

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## 2016 Fleet/Non-Retail Ford F-150 4WD SuperCrew 145" XL W1E

### **STANDARD EQUIPMENT**

#### STANDARD EQUIPMENT - 2016 Fleet/Non-Retail W1E 4WD SuperCrew 145" XL

##### INTERIOR

- Cloth 40/20/40 Front Seat -inc: 2-way manual driver/passenger adjustment and armrest
- 4-Way Driver Seat -inc: Manual Recline and Fore/Aft Movement
- 4-Way Passenger Seat -inc: Manual Recline and Fore/Aft Movement
- 60-40 Folding Split-Bench Front Facing Fold-Up Cushion Rear Seat
- Manual Tilt/Telescoping Steering Column
- Gauges -inc: Speedometer, Odometer, Voltmeter, Oil Pressure, Engine Coolant Temp, Tachometer, Transmission Fluid Temp and Trip Odometer
- Manual Rear Windows
- 6 Person Seating Capacity
- Front Cupholder
- Rear Cupholder
- Manual Air Conditioning
- HVAC -inc: Underseat Ducts
- Glove Box
- Interior Trim -inc: Cabback Insulator and Chrome Interior Accents
- Full Cloth Headliner
- Urethane Gear Shift Knob
- Day-Night Rearview Mirror
- Passenger Visor Vanity Mirror
- 3 12V DC Power Outlets
- Fade-To-Off Interior Lighting
- Full Vinyl/Rubber Floor Covering
- Pickup Cargo Box Lights
- Instrument Panel Bin, Dashboard Storage, Driver / Passenger And Rear Door Bins

Report content is based on current data version referenced. Any performance-related calculations are offered solely as guidelines. Actual unit performance will depend on your operating conditions.

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Customer File:

Prepared By:  
administrator

## 2016 Fleet/Non-Retail Ford F-150 4WD SuperCrew 145" XL W1E

### **STANDARD EQUIPMENT**

STANDARD EQUIPMENT - 2016 Fleet/Non-Retail W1E 4WD SuperCrew 145" XL

#### *EXTERIOR*

- Wheels: 17" Silver Steel
- Tires: P265/70R17 OWL A/T
- Regular Box Style
- Steel Spare Wheel
- Full-Size Spare Tire Stored Underbody w/Crankdown
- Clearcoat Paint
- Black Rear Step Bumper
- Black Front Bumper w/Black Rub Strip/Fascia Accent and 2 Tow Hooks
- Black Side Windows Trim and Black Front Windshield Trim
- Black Door Handles
- Black Manual Side Mirrors w/Convex Spotter and Manual Folding
- Fixed Rear Window
- Light Tinted Glass
- Variable Intermittent Wipers
- Aluminum Panels
- Black Grille
- Tailgate Rear Cargo Access
- Manual Tailgate/Rear Door Lock
- Fully Automatic Aero-Composite Halogen Daytime Running Headlamps w/Delay-Off
- Cargo Lamp Integrated w/High Mount Stop Light

Report content is based on current data version referenced. Any performance-related calculations are offered solely as guidelines. Actual unit performance will depend on your operating conditions.

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February 5, 2016

MEMORANDUM

TO: MAYOR AND CITY COUNCIL

FROM:  BRETT ESTES, CITY MANAGER

SUBJECT: ORDINANCE OF THE CITY OF ASTORIA IMPOSING A THREE PERCENT TAX ON THE SALE OF MARIJUANA ITEMS BY A MARIJUANA RETAILER AND REFERRING ORDINANCE

**DISCUSSION/ANALYSIS**

This ordinance received its first reading at the February 1, 2016 City Council meeting. Under House Bill 3400, cities may impose up to a three percent tax on sales of marijuana items made by those with recreational retail licenses. This tax must be imposed by referring an ordinance to the voters at a statewide general election, meaning an election in November of an even-numbered year. There is no provision in law for taxing medical sales.

As with any revenue raising measure, it's important that the budget committee approve any proposed taxes as part of its approval of the budget. See the Department of Revenue "Tax Election Ballot Measures" manual for more information.

In anticipation of this matter being brought to City Council to consider referring the matter to the voters, Police Chief Johnston visited with the four existing medical marijuana retailers who have all "opted in" for recreational sales. All of the retailers were very open to the conversation. Some relevant points to the conversation included:

- Three of the four existing businesses plan on converting to recreational outlets. The fourth has plans to remain a medical outlet but will be opening an additional outlet that is a recreational outlet.
- Three of the four existing businesses were very supportive of the City pursuing the tax. The fourth was supportive after a discussion on the state tax plan. They initially believed that this three percent would be on top of the existing 25 percent being levied by the state. Once they learned that the tax would be imposed only on the licensed recreational facility that will have a state tax rate of seventeen percent and not in addition to the higher "opt in" tax of twenty five percent they were supportive.
- Based on verbal estimates of what the businesses have seen for recreational sales since the October "opt in" sales began revenue is estimated to be in the neighborhood of \$100,000 annually.



Revenue estimates are very rough. Given the early sales this is a conservative number; however, what the sales will look like over time is difficult to gauge. The opt in law only allowed sales of flower and not extracts or other marijuana related products. The retail price of edibles and other extracts is more expensive than that of flowers. How the availability of these products in the market shapes the sales is unknown. Additionally, it is unknown what tourism opportunities are available to this market. Several of the current owners have plans to market toward the tourist economy. They also see several other markets available that will require legislative change.

One concern that we tried to address is a concern that high tax will move people back to the black market. All four of the current retailers in Astoria do not believe they are competing on price with the black market. They instead are offering a variety, safety, and surety that the black market cannot. None thought that the tax would move people back to the black market.

To refer the matter to the voters, Council would hold a first reading and second reading of the ordinance at separate meetings then adopt the ordinance by a roll call. After adopting the ordinance Council would adopt the resolution. The resolution is included in this meeting packet as agenda Item 7(b). This adoption will set the ballot title. The ballot title will be published in the “newspaper of general circulation in the city.” After a period of review, if no objection to the ballot title is filed the matter will be filed with the County Elections Official.

### **RECOMMENDATION**

It is recommended that Council consider holding the second reading and adopt the proposed ordinance to refer a 3 percent local option tax to the November 8, 2016 ballot.



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Brad Johnston  
Chief of Police/Assistant City Manager

ORDINANCE NO. 16-\_\_\_\_\_

AN ORDINANCE OF THE CITY OF ASTORIA IMPOSING A THREE PERCENT TAX ON THE SALE OF MARIJUANA ITEMS BY A MARIJUANA RETAILER AND REFERRING ORDINANCE

WHEREAS, Section 34a of House Bill 3400 (2015) provides that a city council may adopt an ordinance to be referred to the voters that imposes up to a three percent tax or fee on the sale of marijuana items by a marijuana retailer in the area subject to the jurisdiction of the city;

WHEREAS, the Astoria City Council wants to impose a tax on the sale of marijuana items by a marijuana retailer in the area subject to the jurisdiction of the City.

NOW THEREFORE, THE CITY OF ASTORIA DOES ORDAIN AS FOLLOWS:

Section 1. Definitions.

- (1) "Marijuana Item" has the meaning given that term in Oregon Laws 2015, Chapter 614, Section 1.
- (2) "Marijuana Retailer" means a person who sells marijuana items to a consumer in this state.
- (3) "Retail Sale Price" means the price paid for a marijuana item, excluding tax, to a marijuana retailer by or on behalf of a consumer of the marijuana item.

Section 2. Tax Imposed. As described in section 34a of House Bill 3400 (2015), the City of Astoria hereby imposes a tax of three percent on the retail sale price of marijuana items by a marijuana retailer in the area subject to the jurisdiction of the city.

Section 3. Collection. The tax shall be collected at the point of sale of a marijuana item by a marijuana retailer at the time at which the retail sale occurs and remitted by each marijuana retailer that engages in the retail sale of marijuana items.

Section 4. Referral. This ordinance shall be referred to the electors of Astoria at the next statewide general election on Tuesday, November 8, 2016.

Section 5. Effective Date. This ordinance will be effective 30 days following the date of its passage by the City Council.

ADOPTED BY THE CITY COUNCIL THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2016.

APPROVED BY THE MAYOR THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2016.

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Mayor

ATTEST:

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City Manager

ROLL CALL ON ADOPTION	YEA	NAY	ABSENT
Councilor Nemlowill			
Herzig			
Price			
Warr			
Mayor LaMear			



# CITY OF ASTORIA

Founded 1811 • Incorporated 1856

February 5, 2016

## MEMORANDUM

TO: MAYOR AND CITY COUNCIL

FROM:  BRETT ESTES, CITY MANAGER

SUBJECT: RESOLUTION APPROVING REFERRAL TO THE ELECTORS OF THE CITY OF ASTORIA THE QUESTION OF IMPOSING A THREE PERCENT TAX ON THE SALE OF MARIJUANA ITEMS BY A MARIJUANA RETAILER WITHIN THE CITY

### **DISCUSSION/ANALYSIS**

In order to impose the three percent tax as described in "Item 7(a) Ordinance of the City of Astoria Imposing a Three Percent Tax on the Sale of Marijuana Items by a Marijuana Retailer and Referring Ordinance", a resolution needs to be adopted that will set the ballot title. This title will refer to the electors of the City of Astoria the question of imposing a three percent tax on the sale of marijuana items by a marijuana retailer within the City. The ballot title will then be published in the "newspaper of general circulation in the city." After a period of review, if no objection to the ballot title is filed the matter will be filed with the County Elections Official.

### **RECOMMENDATION**

It is recommended that Council adopt the proposed resolution.



---

Brad Johnston  
Chief of Police/Assistant City Manager

RESOLUTION NO. 16-\_\_\_\_\_

A RESOLUTION APPROVING REFERRAL TO THE ELECTORS OF THE CITY OF ASTORIA THE QUESTION OF IMPOSING A THREE PERCENT TAX ON THE SALE OF MARIJUANA ITEMS BY A MARIJUANA RETAILER WITHIN THE CITY

WHEREAS, Section 34a of House Bill 3400 (2015) provides that a city council may adopt an ordinance to be referred to the voters that imposes up to a three percent tax or fee on the sale of marijuana items by a marijuana retailer in the area subject to the jurisdiction of the city;

WHEREAS, the City of Astoria City Council adopted Ordinance No. 16-02, which imposes a tax of three percent on the sale of marijuana items by a marijuana retailer in the area subject to the jurisdiction of the City;

NOW, THEREFORE, THE CITY OF ASTORIA DOES ORDAIN AS FOLLOWS:

Section 1. Measure. A measure election is hereby called for the purpose of submitting to the electors of the City of Astoria a measure imposing a three percent tax on the sale of marijuana items by a marijuana retailer in the area subject to the jurisdiction of the City, a copy of which is attached hereto as "Exhibit 1," and incorporated herein by reference.

Section 2. Election Conducted by Mail. The measure election shall be held in the City of Astoria on November 8, 2016. As required by ORS 254.465, the measure election shall be conducted by mail by the County Clerk of Clatsop County, according to the procedures adopted by the Oregon Secretary of State.

Section 3. Delegation. The City of Astoria authorizes the City Manager, or the City Manager's designee, to act on behalf of the City and to take such further action as is necessary to carry out the intent and purposes set forth herein, in compliance with the applicable provisions of law.

Section 4. Preparation of Ballot Title. The ballot title for the measure set forth as Exhibit 1 to this resolution is hereby adopted.

Section 5. Notice of Ballot Title and Right to Appeal. Upon receiving the ballot title for this measure, the Finance Director shall publish in the next available edition of a newspaper of general circulation in the City a notice of receipt of the ballot title, including notice that an elector may file a petition for review of the ballot title.

Section 6. Explanatory Statement. The explanatory statement for the measure, which is attached hereto as "Exhibit 2," and incorporated herein by reference, is hereby approved.

Section 7. Filing with County Elections Office. The Finance Director shall deliver the Notice of Measure Election to the County Clerk for Clatsop County for inclusion on the ballot for the Tuesday November 8, 2016 election.

Section 8. Effective Date. This resolution is effective immediately upon its enactment by the City Council.

ADOPTED BY THE CITY COUNCIL THIS 16<sup>TH</sup> DAY OF FEBRUARY, 2016.

APPROVED BY THE MAYOR THIS 16<sup>TH</sup> DAY OF FEBRUARY, 2016.

\_\_\_\_\_  
Mayor

ATTEST:

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

ROLL CALL ON ADOPTION	YEA	NAY	ABSENT
Councilor Nemlowill			
Herzig			
Price			
Warr			
Mayor LaMear			

Exhibit 1

BALLOT TITLE

Imposes city tax on marijuana retailer's sale of marijuana items

QUESTION

Shall City of Astoria impose a three percent tax on the sale in the City of Astoria of marijuana items by a marijuana retailer?

## Exhibit 2

### SUMMARY

Under state law, a city council may adopt an ordinance to be referred to the voters of the city imposing up to a three percent tax or fee on the sale of marijuana items in the city by a licensed marijuana retailer.

Approval of this measure would impose a three percent tax on the sale of marijuana items in the City of Astoria by a licensed marijuana retailer. The tax would be collected at the point of sale and remitted by the marijuana retailer.

### EXPLANATORY STATEMENT

An impartial, simple and understandable statement explaining the measure and its effect for use in the county voters' pamphlet

*500 word limit under ORS 251.345 and OAR 165-022-0040(3)*

Approval of this measure would impose a three percent tax on the sale of marijuana items by a marijuana retailer within the City of Astoria. If approved, the revenues from this tax are estimated to be \$100,000. There are no restrictions on how the City may use the revenues generated by this tax.

Under Measure 91, adopted by Oregon voters in November 2014 and amended by the Legislature in 2015, the Oregon Liquor Control Commission must license the retail sale of recreational marijuana. The 2015 Legislation provides that a city council may adopt an ordinance imposing up to a three percent tax on the sale of marijuana items (which include marijuana concentrates, extracts, edibles, and other products intended for human consumption and use) by retail licensees in the city, but the council must refer that ordinance to the voters at a statewide general election. The City of Astoria City Council has adopted an ordinance imposing a three percent tax on the sale of marijuana items by a retail licensee in the City, and, as a result, has referred this measure to the voters.