

Minutes of the
**CANNON BEACH CITY COUNCIL SPECIAL MEETING
AND WORK SESSION**
Tuesday, August 8, 2023
Council Chambers

Present: Mayor Barb Knop, Council President Nancy McCarthy, Councilors Brandon Ogilvie, Gary Hayes and Lisa Kerr

Excused:

Staff: City Manager Bruce St. Denis, IT Director Rusty Barrett, Administrative Assistant Tessa Schutt, Police Lieutenant Chris Wilbur, Community Development Director Steve Sokolowski

Other: Special Counsel Bill Kabeiseman and City Attorney Ashley Driscoll

CALL TO ORDER AND APPROVAL OF AGENDA

Mayor Knop called the meeting to order at 6:03 p.m.

Motion: Ogilvie moved to approve the agenda; Hayes seconded the motion.

Vote: Hayes, McCarthy, Ogilvie, Kerr and Knop voted AYE: the vote was 5:0 and the motion carried. The agenda was approved.

CONSENT AGENDA

- (1) **Consideration of the Minutes of the**
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| July 5 | Regular Meeting |
| July 10 | Special Meeting Roberts LUBA Remand |
| July 11 | Work Session/Special Meeting |
| July 12 | Work Session Joint Code Audit |
| July 17 | Work Session Beach Erosion Presentation |
| July 25 | Special Meeting |

Motion: Hayes moved to approve the minutes of July 5, 10, 11, 12, 17 and 25; Ogilvie seconded the motion.

Vote: Hayes, McCarthy, Ogilvie, Kerr and Knop voted AYE; the vote was 5:0 and the motion carried.

PUBLIC COMMENT

Knop reminded the body to be kind and respectful and limit their speaking time to three minutes.

- o Andrew Tonry, P.O. Box 664, Tolovana Park: Tonry said he wanted to correct his statement on the record from the last meeting he spoke at. He said that it was not the

- North Coast Land Conservancy who wanted to use the hall, it was Friends of Haystack Rock. He hoped to share more about the elementary school discussion as the meeting progressed.
- Deb Atiyeh, P.O. Box 1426: Atiyeh shared an email regarding a discussion with Angela Benton about the Dungeness River Nature Center. Atiyeh explained that Benton had visited the Center and shared a writeup with Atiyeh. Atiyeh read Benton's statement.
 - Dick Basch, 1126 Avenue F, Seaside, OR: Basch added to Atiyeh's statement, and spoke about the people he knows of the Jamestown S'Klallam Tribe who had worked closely with the Dungeness Nature Center facility. Basch encouraged the City connect with these individuals as he felt their experience would be valuable.

PUBLIC HEARING

(2) APP 23-05, Appeal by Red Crow, LLC/Jamie Lerma of Planning Commissions approval of AA 23-04, upholding an administrative appeal submitted by Janet Stastny of the City's approval of a Tree Removal Permit.

Knop stated: "This is a hearing regarding the appeal by Red Crow, LLC/Jamie Lerma of Planning Commissions approval of AA 23-04, upholding an administrative appeal submitted by Janet Stastny of the City's approval of a Tree Removal Permit. The property is located at 743 N. Ash St. (Tax Lot 05602, Map 51019AA), and in a Residential Lower Density (RL) Zone."

Knop said, "I am opening the Public Hearing. Does anyone object to the jurisdiction of the City Council to hear this appeal at this time?" There were no objections.

Knop asked, "Does any Councilor believe he or she has a personal bias to declare?" There were none declared.

Knop asked, "Does any Councilor believe he or she has a conflict of interest?"

Ogilvie said that, as a contractor, he had an ongoing, recently-issued building permit with the City. There was a tree permit attached to this permit and which was currently being appealed, Ogilvie said.

Kerr said that she had reached out to the Stasnys, who had told her their thoughts. She also said she had spoken to community members about the matter.

Knop asked, "Has any Councilor had any ex parte contacts or made a site visit? Site visits were declared by Ogilvie, Hayes, Knop and McCarthy.

Knop asked, "Is there any additional correspondence?" Sokolowski replied that a letter was submitted by Stacy Benefield and one by Mick Harris. Both were forwarded to Council, he said. Sokolowski also referred to an email from Jamie Lerma, which he said he would discuss later.

Knop requested the staff report. Sokolowski read the staff report. Kabeiseman explained that the Applicant had requested a continuance and an extension of the 120-day timeline. Kabeiseman outlined Council's options to these ends. Kerr asked a clarifying question about whether the record was closed to new evidence. Kabeiseman confirmed that no new evidence could be submitted. Sokolowski suggested

that one of the reasons for the request for continuance indicated to staff could be to allow a discussion of how to develop the site without the tree removal.

Harris asked if Lerma was in attendance. He was not. Harris thanked the Council for convening the meeting and clarified that the appellant would request a continuance to better work with the City and said that he was optimistic that they could get a better revised design plan around the tree. This is what Lerma and his geotechnical consultants were working on, Harris said, but these plans were not able to be finalized prior to the meeting. If amenable to the Council, they would waive the timeline for a 60-day extension, he added. Harris said he was unsure of what geotechnical reports would say and did not want to make any promises, but explained that the reason for the request was to explore those potential options.

Motion: Kerr moved to grant the extension; Hayes seconded the motion.

Ogilvie asked about whether moving through this motion would preclude hearing any additional information. Knop wondered if anyone present would be willing to wait to give their comments at this date certain of October 3rd.

Vote: Hayes, McCarthy, Kerr, Ogilvie and Knop voted AYE; the vote was 5:0 and the motion carried. The hearing would be continued until a date certain of October 3, 2023.

ORDINANCES

(3) Ordinance 23-08, a Comprehensive Plan Map Amendment and Zone Change for Taxlot 51032BC00400, an Undeveloped Property North of the Intersection of E. Surfcrest Ave and U.S. Highway 101

Sokolowski summarized the staff report, noting the first reading of the Ordinance was done at the August 1, 2023, meeting.

Motion: Hayes moved to approve the second reading and adopt Ordinance No. 23-08 as amended to reflect that the Council rendered a final decision to approve the Comprehensive Plan; Ogilvie seconded the motion.

Kerr said that the Council had a clear opportunity to ensure the development on the property in question would not be developed into a short-term rental now or in the future. She said that the Council did not take this opportunity, and that she thought this was a great disservice to their constituents.”

Hayes read Ordinance 23-08, a Comprehensive Plan Map Amendment and Zone Change for Taxlot 51032BC00400, an Undeveloped Property North of the Intersection of E. Surfcrest Ave and U.S. Highway 101, as amended.

Hayes responded to Kerr’s concern and said that he hoped the Council addresses potential deed restrictions in the future. Kerr said it was too late for this. Hayes said that, yes, it was too late for this, but rather than as a one-off the Council could address the matter on a larger scale in the future.

Driscoll read Ordinance 23-08 as amended.

Vote: Hayes, McCarthy, Ogilvie and Knop voted AYE, Kerr voted NAY; the vote was 4:1 and

the motion carried. Ordinance 23-08 was adopted as amended.

Knop said Ordinance 23-08 had been adopted as amended and would become effective 30 days from adoption.

Close the Special Meeting and Start Work Session

DISCUSSIONS

(4) CBE Research Advisory Committee Presentation

Knop thanked Hayes for chairing the Committee and turned the floor over to Hayes to present.

Hayes read his statement, which explained that the ad hoc committee met five times and approved a set of recommendations, including a projected operating budget. Hayes referred to the documents, including Attachment A to the corresponding staff report, and offered to discuss the project and answer any questions.

Kerr asked about where income was included in the projected budget. Hayes suggested Sinclair could speak to this, but that the Committee attempted to reach a solution to the question, and as most of the funding would come from TLT, the Committee operated under a \$500k assumption. Hayes said that other fundraising efforts would be underway, but he did not want to incorporate these prematurely.

Kerr expressed her discomfort with the projected budget's exclusion of income.

Sinclair addressed the body regarding the projected budget. He said that this was a "year two" budget to try to get an idea of what things would look like. Sinclair said that the intent of the Committee was that most of the things the facility would provide to this community would be at no cost to the community, but the things that would likely generate income like conferences, small events, etc. would have an associated cost sufficient to cover other costs.

Hayes added that the Committee did not go into detail about additional uses, like third party uses. He explained that they had also looked at the potential of a non-profit organization to seek grants for programming, which would likely be the bulk of the additional funding. Kerr asked for what kind of programming the grants would be sought. Hayes answered that the Committee had discussed educational programming, classes, events, and exhibits.

Sinclair said that if the Council's wish was that the facility be self-funding, it would pursue grants for programming. If Council decided to support the facility with the net of whatever is left from TLT, he said, that would be great, but that part of the next phase would be to look for funding opportunities. Several were already identified, Sinclair said, which may have been applicable if they'd been involved earlier.

Sinclair and Hayes explained that they found the matter important but had used the document as a basic placeholder to update the Council with their progress, and that their estimates had been conservative.

St. Denis said that a facility like this could only become self-funding if it had contributions to keep it running. The designing of two buildings, like the gym with five or six doors, two in lobby area, three to four classrooms with doors, most of facility is outdoors and accessible from any direction. Because of the many separate entrances and features, he said, there was no single contact point where everyone would pay as they entered, which would make it a different type of facility that would not be self-funding unless holding major events that are able to raise money.

Kerr recalled \$200,000 as the number she remembered hearing for the facility. St. Denis responded that he would look into this original estimate.

Sinclair agreed with Kerr that the projected budget was a lot of money. He explained that the figures developed within the scope of other facilities the Committee explored. Sinclair said that metrics from other facilities, like what percentage was payroll versus operating expenses, influenced the estimate.

Hayes thanked Atiyeh for her research of different facilities and said that they explored many other concrete examples.

Tonry said the Committee spent 95% of its time on use, and maybe 5% on budget. He explained that the Committee agreed this would evolve, but that it was assumed that funding would come largely from restricted TLT funds.

Hayes explained that the Committee sought direction on next steps from Council. He said that the Committee had discussed the creation of a steering committee for the facility that would move forward with further detail and recommendations about forming a nonprofit. Hayes added that a few Committee members had concerns about their ability to continue.

Kerr asked clarifying questions and suggested that the ad hoc committee should further flesh out uses for a broader perspective before forming a steering committee.

Tonry said that the primary facility use the Committee devised was a staffed interpretive center that would be open throughout the week. Secondary uses would be community uses like gym access, he said. Tonry added that he had wished to discuss restrictions, but that the Committee did not get to that point.

Hayes recalled that Kerr's suggestion could be carried out with the current Committee. Hayes explained a few other uses discussed by the Committee but said they had avoided getting too granular.

Kerr said that she thought the Committee had done a great job, and that it would make sense to her for them to continue and flesh out uses.

Hayes said he was unsure of how soon it would be useful to get active in forming a nonprofit, but that it needed to be formed and up to speed in time for operations.

Tonry added that the reason they brought the topic to the Council where they did was to get a sense of whether they were going down the right track, and whether to continue in this way or reinvent the idea.

Hayes also asked if the Council was comfortable with the proposed management model.

Kerr asked a clarifying question of Atiyeh.

Atiyeh responded that she had spoken to the directors of eight facilities and found that a large percentage of their income was from grants. Atiyeh gave examples of potential grants. Community and hotel owners want to see the money, she said, so that's what the Committee did.

Hayes said that it was difficult to find perfectly comparable facilities. Hayes, Tonry, and Atiyeh named several similar facilities.

Ogilvie thanked Atiyeh for her work and said he would be very interested in pursuing all of what was said. He asked about whether a nonprofit would be necessary to get their foot in the door.

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Atiyeh suggested she could interview an Executive Director and do a writeup on this topic. She suggested a partnership with organizations with fundraising expertise.

Kerr asked who would write the grants and said this was not incorporated in the budget.

Atiyeh answered that an Executive Director would do this.

Basch asked whether it would be useful for Hayes to read through the recommendation regarding facility use.

Hayes read the primary use paragraph. He explained that the Committee broke it up a little beyond that to talk about education, the gym, and third-party events.

Driscoll said she believed the Committee was formed via resolution for a limited purpose. She added that the purpose could always be extended if it was the Council's desire.

Tonry requested the Council describe their feelings about the primary use suggestion.

Ogilvie said that, if looking for guidance moving forward, he would ask that the uses be further defined for groups, especially using some type of metric that might be attached to it to explain income.

Hayes asked the Council if they wanted the facility to be a moneymaker.

Ogilvie responded that, if events could be handled with a shuttle, it would be one way to accommodate more guests without parking. He said he agreed with St. Denis that he did not envision the facility running in the black. Ogilvie acknowledged Atiyeh's comments, saying that grants for facility operations must be explored.

McCarthy said she liked the general intent statement and would like more discussion about how to bring in groups, like small discussion groups or conference situations. She said she was concerned about the time provided for gym access.

Sinclair responded that the spreadsheet may have been misleading, but that the expectation was that the gym would be open whenever not otherwise occupied.

McCarthy requested Atiyeh compile her reports and distribute them to the Council.

Atiyeh spoke further about the Dungeness facility's operating budget and the breakdown between earned income, grants, donations, etc.

Steidel reinforced Sinclair's statements. He explained that the budget was only a model. He expressed concern over vaguely-defined legal descriptions of usage limitations. He suggested examining matters like an ordinance, with time, place, and manner restrictions.

Hayes explained that the Committee had asked Driscoll about how to define these use restrictions.

Driscoll responded that this matter was somewhat premature in this conversation, but questions posed last time were whether running the facility through a 501(c)3 would allow wider latitude than if operated by the City. She explained that this was a fact-intensive inquiry, and that the 501(c)3 could become significantly-intertwined enough with the City to be considered a state actor on its own. If the facility was to be open for public use, Driscoll explained, the regulations must be based on time, place, and manner restrictions which would be viewpoint-neutral. She said she planned to provide Council members and others more detailed legal analysis about this.

Driscoll read through Resolution 23-09 and recalled the focus and intent of the Committee's formation. If going forward, Council is looking for more flesh on these items, doesn't believe work of this committee is finished. However, if looking for something different, draft new resolution.

After some discussion, it was determined that the additional guidance fell within the scope of Resolution 23-09, and that a new resolution would not be required.

Hayes asked whether there were concerns about the Committee's work to date. No concerns were expressed.

The body discussed how long the Committee may need to continue expanding their information. They discussed how long the formation of a nonprofit may take.

Steidel suggested that Hayes and Knop could provide more regular updates to the Council about the Committee's work.

Knop said it would be helpful to have a packet of information from Atiyeh.

St. Denis and the body generally agreed that the formation of a 501(c)3 and the exploration of its legal limits would be an important step in pursuing additional funding.

(5) ECFR Fire Update

Cannon Beach Rural Fire Protection District Chief Marc Reckmann and Deputy Chief Jason Smith presented a PowerPoint about the fire within the Ecola Creek Forest Reserve on 7/12/2023, a copy of which is included in the record. Smith and Reckmann answered Council's questions.

La Bonte spoke to contracted improvements of this "B-road."

Sinclair requested that the Parks Committee have a chance to participate in these discussions. He said that crossing over the North Fork of the Creek would be problematic and that OWEB would need to be involved. Sinclair said he felt a sense of commitment to the property and would like to be part of it.

(6) Outdoor Dining

St. Denis read the staff report.

Ogilvie said he thought it was time to eliminate the waiver.

Hayes said he thought it was time to do away with the emergency. He suggested examining parking issues with the code audit to help make the downtown area more pedestrian-friendly.

McCarthy agreed with Ogilvie and Hayes. She expressed frustration that the code audit had seemed singularly-focused on wetlands issues.

The Council discussed the code audit's progress to date.

Knop agreed that an update from Urbsworks would be useful before their meeting in September.

St. Denis explained that consultants were working on reorganization, so it would not make sense to fix specifics until things were in line.

Kerr said that, while the emergency declaration was over, she had read about a new COVID strain along the East Coast, and cautioned the body that it may not be over.

St. Denis clarified that they would take no action until September 30, 2023, at which point the resolution would automatically sunset.

(7) Removal of Commission, Committee or Board Member from Office

St. Denis read the staff report.

Kerr clarified who should be informed for an "excused" absence. Knop, St. Denis, and McCarthy said that the staff liaison to the Committee should be notified, who can inform the body.

Driscoll suggested that illness, personal emergencies, unavoidable conflicts, and travel could be four parameters for absences.

The agreed-upon process was to provide notification to the liaison when reasonably possible prior to a meeting. Occasions like car accidents, illness, etc. may require some leeway, the body agreed. Driscoll recommended that committee chairs make a recommendation to Council regarding removal. Council would provide notice to the impacted board member and provide the opportunity to talk with Council during an executive session. The person may also opt to withdraw from committee.

The body agreed upon this matter and Driscoll said she would draft these guidelines.

(8) Good of the Order

St. Denis explained he was gathering additional information about bus service.

Kerr requested clarity about who to call when the rulemaking process for shellfish harvesting in town was complete. St. Denis offered to examine the matter further to provide this clarity.

Hayes asked for an update about a records request. St. Denis explained that it was in progress.

ADJORNMENT

The meeting was adjourned at 8:36 p.m.

ATTEST:

Tessa Schutt, Administrative Assistant

Barb Knop, Mayor