

MINUTES

Eugene City Council
Work Session Council Chambers – City Hall
777 Pearl Street—Eugene, Oregon

June 28, 2010
5:30 p.m.

COUNCILORS PRESENT: George Brown, Mike Clark, Andrea Ortiz, George Poling, Chris Pryor, Betty Taylor, Alan Zelenka.

COUNCILORS ABSENT: Jennifer Solomon.

Her Honor Mayor Kitty Piercy convened the meeting of the Eugene City Council.

A. Committee Reports and Items of Interest from Mayor, City Council, and City Manager

Ms. Piercy reported the *Art and the Vineyard* festival and the *Butte to Butte* were scheduled for the first weekend in July, and she would lead the *First Friday Artwalk* on July 2, 2010. There was an HIV Alliance press conference on June 29, regarding a proclamation in support of National HIV Testing Day. She would attend a One-on-One session at Albertson's, on Coburg Road, with Mr. Poling. She would represent the City at a reception for the U.S. Department of Housing and Urban Development (HUD), the U.S. Environmental Protection Agency (EPA) and the U.S. Department of Transportation (DOT) in Salem on June 30. The airport runway opening celebration was scheduled for July 2. Downtown Eugene would host a street parade and opening ceremony for the Pan American Masters Basketball Championships at the Fifth Street Public Market on July 3.

Mr. Clark reported that he and Ms. Taylor continued to meet weekly with Police Auditor Mark Gissiner, with the next meeting occurring on June 29, 2010. He enjoyed the recent Joint Elected Officials meeting and looked forward to the outcome of the meeting.

Mr. Zelenka reported that the *Oregon Bach Festival* was underway. He attended City of Springfield Fire and Life Safety Chief Dennis Murphy's retirement party. He thanked Chief Murphy for 30 years of service to the community, noting he had been instrumental in the creation of FireMed, Life Flight, and many other benefits to the community. He would attend the Wednesday council meeting via telephone.

Ms. Ortiz said the City Council had been invited to the Willamette High School health center open house on June 29, 2010. She recently attended the National Association of Latino Elected Officials (NALEO) in Denver which was attended by over 500 people and featured top notch speakers including U.S. Department of Homeland Security (DHS) Secretary Janet Napolitano. She also visited Red Rock Amphitheater.

Mr. Pryor was glad to see a good turnout at the Joint Elected Officials meeting. Lane Council of Governments met in Florence in June, and continued with its efforts to create local initiatives related to human services, communication, and economic development.

Mr. Poling reminded councilors that he and Ms. Piercy would participate in a One-on-One session at Albertson's, on Coburg Road. He was pleased the *Safety First* weekend had again been a successful event. He would be away from City Council meetings for about two weeks beginning July 14. He would participate by telephone.

Mr. Brown attended the Community Alliance of Lane County (CALC) open house on June 25. The organization rededicated the CALC building as the Leslie Brockelbank Peace and Justice Center, and participated in the Whitaker Last Friday Art Walk. He attended the Jefferson Westside Neighbors picnic at Monroe Park.

Ms. Taylor reported the Crest Drive Citizens' Association held a garden party which featured a book of oral histories about the neighborhood. She had read in the newspaper that there were several million dollars remaining in the parks fund. She did not think it was a good idea for the City to help John Musumeci out by spending that money on property he had available, but she did think the City should buy the Amazon headwaters property to protect the water. She was concerned about parking in the Walnut Mixed-Use Center. Jeff Nelson made good points in a communication he had sent to councilors.

Mr. Ruiz said he would join neighborhood leaders from River Road, and Santa Clara, on a tour of the neighborhoods on June 29, 2010. A media event featuring the Beam project downtown was scheduled for June 29, and *Summer in the City* started on June 30. City of Eugene Fire and Emergency Services Chief Randy Groves would begin serving as the Acting Chief for the City of Springfield on July 1. He would attend the Wilamut Natural Area meeting on July 15.

B. WORK SESSION: Eugene Water Board Sale of Water (EWEB) to Veneta

Mr. Ruiz introduced Brenda Wilson, City of Eugene Intergovernmental Relations Manager. She reviewed the history of the issue, stating the council was presented with background information on May 12, 2010, on the proposed water sale to the City of Veneta by EWEB. EWEB had filed a contract with the Lane County Circuit Court for validation. The council raised many questions about the sale and the certification/perfection of water rights in general. The council directed staff to: schedule a joint meeting with the EWEB Board of Directors before the council made a decision on the issue; schedule a public forum, with EWEB's involvement, to provide information to the public about the proposed sale of water; and to schedule a public hearing on EWEB's proposed sale of water to the City of Veneta. EWEB filed for a 30-day extension of time, which was now June 30, 2010, in order to file an appearance in the validation case in order to provide more time for the process directed by the council. In addition to receiving information at the council-directed sessions, public comment had been received from Jan Wilson of the Western Environmental Law Center, Shawn Boles, Howie Bonnett, and Dave Funk, and EWEB, copies of which were attached to the Agenda Item Summary (AIS). While the Eugene City Manager believed the perfection of the third water right was in the City of Eugene's interest, he also believed that the issue of Charter authority should be resolved first. The City Manager recommended that the City intervene in the pending validation proceeding.

At the request of Ms. Piercy, Mr. Ruiz explained his recommendation was to ask the City Council to direct staff to intervene in the process and resolve the charter authority before the City considered the contract with the City of Veneta. He added the City of Eugene was engaged in the Envision Eugene process that was providing opportunities for discussions around how the community wanted to grow, which may or may not inform the EWEB water sale discussion.

Mr. Brown stated Mr. Ruiz's recommendation was consistent with the basis of EWEB's recommendation, as stated in Attachment D to tonight's agenda, Testimony to Eugene City Council, dated June 28, 2010, in which EWEB requested that any resolution passed was written to facilitate continuation of the validation process through the courts.

Ms. Piercy directed councilors to a memorandum from former City of Eugene Planner Jim Croteau which provided a history of the water rights issue, and EWEB's desire to be able to supply water to the City. She believed the authority issue should be settled, which would give the City of Veneta and the environmental interests, time to meet, and enable the City of Eugene to complete the Envision Eugene process.

Mr. Pryor appreciated the work done on the issue, and Mr. Ruiz's proposal, which he expected would be in the best interests of Eugene. Mr. Pryor identified three fundamental issues: 1) authority to grant the privilege to sell the water; 2) should the water rights be perfected and how they should be perfected, and 3) should whoever had the authority agree to a contract to sell water to the City of Veneta. He asked if one or two of the issues could be resolved and the most important one(s) carried forward. He asked if the City would be blocked from resolving the authority question at a later date if the City Council granted, through a City resolution, the authority to sell the water.

City Attorney Glenn Klein said if the City Council approved the water sale, the contract would be deemed valid by a judge and would resolve the authority question. He opined if the council wanted the charter question decided, it should not approve the water sale at this time. He added that the council could reconsider the issue after a judge had declared whether the City or EWEB had the authority to decide whether the sale should take place. If the council acted tonight, Mr. Klein thought the council would significantly diminish the chance that the court would decide the charter question.

In response to Mr. Pryor, Mr. Klein said the charter question could only be resolved in two ways, by the court or by the voters.

Mr. Poling said, regardless of whether the council approved or disapproved the water sale, the council needed to clarify the issue of who had the authority. He appreciated the proposal set forth by Mr. Ruiz which he would support.

Mr. Clark supported Mr. Ruiz's recommendation. Mr. Clark averred the water rights belonged to the City of Eugene. The City Council should decide how the water rights were addressed in the future and which water rights should be perfected into the future.

Mr. Brown believed Mr. Ruiz's recommendation provided the correct direction for the City of Eugene. He opined there could be other cities that applied for the City's water rights. He said the council would need to determine if the City wanted to become the regional water supplier.

Ms. Ortiz was comfortable with the direction offered by Mr. Ruiz's proposal. She asked if the City of Eugene had the authority to make the decision based on what other cities may or may not want to do.

Mr. Klein said if the City Council had the authority under the charter to authorize or not authorize EWEB to wholesale water, it could authorize or not authorize for any reason. If the City Council did not have the authority, and the EWEB board had the authority, the only say the City Council would have related to how other cities grew would be the same authority any other city had with respect to how Eugene grew. If other cities did not like the Envision Eugene proposals, they could become interested parties and appeal the Envision Eugene proposals to the Land Use Board of Appeals (LUBA) or other State of Oregon agencies.

Ms. Ortiz had worked hard to improve intergovernmental relationships and did not want the City to be viewed as trying to tell other communities what they could do.

Mr. Zelenka supported Mr. Ruiz's recommendation. While it was clear to him that provision of water outside the urban growth boundary (UGB) required council approval, the issue would be decided by the court.

In response to a question from Mr. Zelenka, Ms. Wilson said the City of Veneta had received a funding package consisting of \$2.6 million in grants and \$13 million in loans. The City of Veneta had to advise the U.S. Department of Agriculture Rural Development of its decision by July 13, 2010.

Mr. Zelenka did not see the proposal before the council as the City of Eugene trying to tell the City of Veneta what to do within its UGB. The question was whether the action taken by the City of Eugene would be based on the principles of how it would make decisions, including the Growth Management Policies (GMP). He believed the sale of water to the City of Veneta violated GMP 1, 2, 5 and 10 and other sustainability issues related to sprawl versus compact urban growth.

Ms. Taylor supported Mr. Ruiz's proposal. She thought the City of Eugene had the right to decide and it would be wrong to take the action of selling water without extremely convincing arguments to support such a decision.

Ms. Piercy asked what role the Board of County Commissioners (BCC) would have over a water line going to Veneta if it was determined that EWEB had the authority.

Mr. Klein said it would depend on whether there were Eugene/Springfield Metropolitan Area General Plan (Metro Plan) or Lane County Rural Comprehensive Plan (Rural Comp Plan) changes or Lane County permits the City of Veneta would be required to acquire. He did not know what land use issues would apply to building the pipeline. If the Lane County permitting process was an administrative one, it was unlikely that the BCC would be involved in a decision related to the water line.

Mr. Pryor said the reason to sell or not sell water to the City of Veneta was related to intent, which would be an important discussion to have. However, as a Eugene City Councilor, his role was to assess and protect the interests of the City of Eugene and not Lane County. If the sale of water represented a risk to the City of Eugene, that would be a legitimate reason not to sell the water. If the reason was that the City of Eugene did not want the City of Veneta to grow or take other action, he did not have the authority to control what action another community took. He noted local control had been an important issue for the City of Eugene before the state legislature and every city was entitled to local control. It would be important for the City of Eugene to carefully and thoughtfully consider why it would or would not sell water to the City of Veneta.

Mr. Brown asked if other parties involved in the question of selling water to the City of Veneta would pull back.

Mr. Klein asked Jan Wilson, attorney for the Western Environmental Law Center, representing the interveners, to comment on Mr. Brown's question.

Ms. Wilson opined her agency would continue to participate. She observed that EWEB board member Jon Brown was quoted in that day's Register Guard saying this was not an adversarial position and there were not sides. It was a matter of everyone bringing forward their arguments for consideration by the court.

Mr. Clark, referring to the three fundamental issues identified by Mr. Pryor, said he saw the council addressing the issue of authority to grant the privilege to sell the water tonight. Addressing if the water rights should be perfected, how they should be perfected and should water be sold to the City of Veneta should be addressed in the future. As a Eugene City Councilor, he had a duty to protect the largest amount of potential rights for future residents of Eugene. It was unknown how much water future generations would need or how much would be

available. He had heard from some parties that selling water to the City of Veneta was in conflict with the City of Eugene's GMP and unsustainable. He suggested if the City of Veneta were allowed to grow it might have an increase in jobs and industry which would mean fewer people would be driving from Veneta to Eugene for employment. He observed if the City of Eugene did not sell water to the City of Veneta, and the City of Veneta acquired water rights by another means, another facility would be required to withdraw the water from the river, which would not be very sustainable. He hoped the council would look at good data to determine the best direction to proceed.

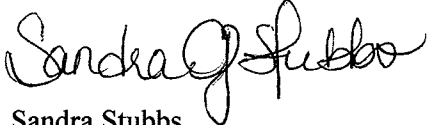
Mr. Zelenka said the council regularly made decisions that impacted other people which were not based on what those other people would do. It was legitimate for the council to assess an action based on the City's principles and policies, to ensure they were consistent. Every action had an economic, environmental and social aspect, referred to as the triple bottom line. Every triple bottom line aspect and the impacts should be assessed to determine the impact on the community.

Ms. Piercy asked if the council understood the triple bottom line impact of the sale of water rather than the City of Veneta taking water from their ground water supply, which would impact nearby rivers. She did not want the council's action to be interpreted that the Eugene City Council disregarded the City of Veneta's authority over its community or disrespect of the community. She asserted all of the local communities had a responsibility for regional planning. She saw the water sale issue as a regional and state responsibility for managing growth.

Mr. Clark, seconded by Ms. Taylor, moved to direct the City Manager to intervene in the validation proceeding and argue that the City Charter grants to the council, rather than EWEB, the authority to decide to sell water outside the City's limits. The motion passed unanimously, 7:0.

The meeting adjourned at 6:40 p.m.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Sandra Stubbs".

Sandra Stubbs
Deputy City Recorder

(Recorded by Linda Henry)