MINUTES

Eugene City Council
McNutt Room – City Hall
777 Pearl Street—Eugene, Oregon

May 12, 2010
Noon

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

Her Honor Mayor Kitty Piercy called the work session of the Eugene City Council to order.

A. WORK SESSION: Eugene Water & Electric Board Water Rights

City Manager Jon Ruiz introduced City Attorney Glenn Klein to present information regarding the proposed Eugene Water & Electric Board (EWEB) contract with the City of Veneta.

City Attorney Klein apologized for the lateness of the work session discussion information that had been provided to the council members. He provided an overview of the discussion information that had been provided to the council as part of the agenda item summary materials and noted that an article had appeared in the May 10, 2010, edition of the *Register-Guard* regarding EWEB's ongoing negotiations with the City of Veneta for the sale of water rights to Veneta. City Attorney Klein noted that the terms of the sale had been finalized and that the contract for the sale had been submitted to the Lane County Circuit Court for validation.

City Attorney Klein stated that the Eugene City Charter granted EWEB the authority to operate the water and electric utility "subject to control by the council of extension of water service." He further noted that the council, as part of its legislative powers, had also adopted certain Code provisions (Section 2.212) that provided in part that the "City, including EWEB, shall not provide water, water service or sewer service outside the city limits except as authorized pursuant to the City Charter, this Code, and adopted resolutions."

City Attorney Klein reported that EWEB believed that its authority under the Eugene City Charter to operate the water utility included the authority to sell water rights to the City of Veneta.

City Attorney Klein stated from the agenda item summary materials that City Manager Ruiz believed that perfecting the City's water rights was a good idea.

City Attorney Klein noted the staff recommendation that the council direct the City Manager to hold a public forum to allow members of the community to learn more about EWEB's proposed sale of water to the City of Veneta. He suggested that any such public forums be conducted in conjunction with EWEB staff.

City Attorney Klein noted that subsequent to the public forum, staff recommended that the City Council then conduct a public hearing to solicit feedback regarding EWEB's proposed water sale before the council determined a position regarding said sale.

City Attorney Klein referenced the timelines involved in the litigation surrounding EWEB's proposed water sale and stated that the City of Eugene, in order to preserve its rights to participate in EWEB's transaction, would need to direct him to take action no later than the end of May 2010.

City Attorney Klein noted that his intention, should the staff-recommended motion pass, was to file a motion in the Lane County Circuit Court indicating that the Eugene City Council planned to hold a public forum and hearing.

City Attorney Klein noted that Intergovernmental Relations Manager Brenda Wilson was available to provide to the council further information regarding water rights.

City Attorney Klein, responding to a question from City Attorney Klein, suggested that the Lane County Circuit Court's determination regarding the validity of the EWEB contract with Veneta would be made within the next six to seven months.

City Attorney Klein, responding to a question from Ms. Ortiz, noted that the City of Eugene did not receive contributions in lieu of taxes on water.

City Attorney Klein, responding to a question from Ms. Ortiz, asked if EWEB had held any public hearings regarding its proposed contract with the City of Veneta.

Ms. Ortiz assumed that some sort of wetlands impact study would be conducted as part of EWEB's proposed water sale to the City of Veneta.

City Attorney Klein responded to Ms. Ortiz's comment and briefly noted the various municipal processes that EWEB and the City of Veneta would be required to undergo as part of the water sale. He further noted that the current staff recommendation to the council would not necessarily impact those processes.

Mr. Brown asked if there were any representatives from EWEB present to speak to the staff-recommended motion. City Manager Ruiz suggested that City staff could forward the council's questions regarding the matter to EWEB, and then report back to the council, and would also provide the council with additional information regarding water availability and usage in Veneta.

City Attorney Klein suggested that any information regarding EWEB's sale of water to Veneta that staff collected for the council might also be used in any public forums or hearings regarding the matter.

City Attorney Klein, responding to a question from Mr. Brown, stated that EWEB had not sought the validation of the Lane County Circuit Court when it extended its water utility service to the Bethel area.

Mr. Brown noted that he still had several questions regarding how the EWEB water sale to Veneta related to the City of Eugene's Climate and Energy Action Plan and that he would email those questions to staff.

Mr. Zelenka understood from City Attorney Klein's comments that the Eugene City Council needed to approve any water sale by EWEB that took place outside the Eugene city limits. City Attorney Klein confirmed Mr. Zelenka's understanding but could not confirm whether or not the City of Eugene had approved water sales for the River Road and Santa Clara areas. He did know that the City of Eugene had approved a previous EWEB water sale to the Willamette Water Company. City Attorney Klein described how the City's code provisions had been revised in recent years with respect to the sale of water to districts beyond the Eugene city limits.

Mr. Poling arrived to the meeting at 12:10 p.m.

City Attorney Klein noted that although the Eugene City Charter was clear that EWEB needed the approval of the Eugene City Council for extraterritorial extensions of "water service" there was a difference of opinion as to whether or not the wholesale purchase of water by a city was actually water service or a sale of water.

City Attorney Klein briefly discussed how the staff-recommended motion would relate to the Lane County Circuit Court's review of the EWEB contract.

Mr. Zelenka expressed his support for the perfection of local water rights but noted his uncertainty regarding EWEB's proposed water sale to the City of Veneta.

City Attorney Klein responded to Mr. Zelenka's comment and stated that the staff-recommended motion had been intended to ensure that sufficient information regarding the EWEB sale would be provided to the Eugene City Council in order that they might make an informed decision regarding the sale.

City Attorney Klein hoped that the City might schedule the public forum during the month of May and that the subsequent public hearing regarding the EWEB water sale could be scheduled for before the end of June.

Mr. Zelenka indicated his understanding that any motions filed by City Attorney Klein on behalf of the City would be intended to preserve the right of the City of Eugene to participate as an interested party in EWEB's water sale to Veneta. City Attorney Klein confirmed Mr. Zelenka's understanding.

Ms. Taylor asked if the only way the City could protect local water rights surrounding the EWEB sale to Veneta was through the legal action which City Attorney Klein had described. City Attorney Klein responded that the course of action he had described was the only course that did not require direct assistance from EWEB.

Ms. Wilson, responding to a question from Ms. Taylor, briefly described how local water rights might be perfected by demonstrating a real and beneficial use of the water. Ms. Wilson further discussed other ways in which local water rights might be formally perfected for public use.

Ms. Wilson, responding to a question from Ms. Solomon, noted that municipalities were required to provide water management conservation plans to the State that demonstrated a clear plan for the perfection of local water rights. Mr. Wilson further noted that municipal use water laws had changed in the past few years so that municipalities were required to demonstrate beneficial use within a reasonable timeframe.

Ms. Wilson, responding to a question from Ms. Solomon, described how water allocations under established and perfected water rights were usually made. She further maintained that EWEB was concerned that it might lose its water rights for the City of Veneta if it did not act quickly to perfect those water rights.

City Attorney Klein suggested that City staff might ask EWEB to help the City develop a plan for perfecting local water rights as part of the upcoming public forums regarding the EWEB water sale to Veneta.

City Attorney Klein, responding to a question from Ms. Solomon noted that EWEB sought the Lane County Circuit Court's validation on the contract for its proposed water sale to Veneta. He further noted that EWEB's contract might be deemed valid if it was approved by the Eugene City Council.

City Manager Ruiz suspected that EWEB's contract with the City of Veneta, if deemed valid by the Lane County Circuit Court, might be cited as a precedent for any future water sales beyond the Eugene city limits.

Mr. Pryor agreed with Ms. Wilson's explanation regarding the manner in which the City of Eugene needed to maintain and perfect its local water rights. He further maintained that the staff recommended motion represented a way in which the City might protect its claim for local water rights.

City Attorney Klein, responding to a question from Mr. Clark, described the relationship between the City of Eugene and EWEB with particular emphasis on how that relationship affected the utilities provided by EWEB. City Attorney Klein further noted that while EWEB was technically a part of the City of Eugene, under the Eugene City Charter, certain City powers were delegated to EWEB.

City Attorney Klein specified that the water rights under discussion belonged to the City of Eugene and that EWEB was not an independent legal entity.

Mr. Clark asked if EWEB shared City Attorney Klein's understanding of the relationship between itself and the City of Eugene. City Attorney Klein responded that he had not asked EWEB if it agreed that it was part of the City of Eugene, but that he had identified legal precedent that demonstrated that it was.

Mr. Clark recognized that the discussion at hand concerned EWEB's authority with respect to local water rights and whether or not EWEB had the authority to sell water outside the Eugene city limits without the approval of the Eugene City Council.

Mr. Poling asked if City Attorney Klein's plan to file court pleadings would establish a good faith effort to perfect the City of Eugene's water rights. Ms. Wilson replied that such legal action would not solely perfect the City's water rights but would demonstrate to State officials that the City intended to perfect its water rights. Ms. Wilson restated that the City needed to put water to a beneficial use before the rights concerning the water would be perfected.

Ms. Wilson, responding to a comment from Mr. Poling, stated that she did not believe it was likely that the City of Eugene would lose its water rights as a result of any legal actions relating to EWEB's water sale to Veneta.

Ms. Ortiz indicated her frustration that EWEB staff was not more directly involved in the council's discussion. She hoped that EWEB representatives would be provided the opportunity to present their rationale for their current course of action with respect to the water sale to the City of Veneta.

Ms. Ortiz supported EWEB's efforts to provide water to the citizens of Veneta.

Mr. Zelenka indicated his disappointment with the EWEB Board of Directors for their reluctance to involve the Eugene City Council in their proposed contract with the City of Veneta.

Mr. Zelenka briefly discussed his understanding of the City of Eugene's current water rights and asked for further clarification from Ms. Wilson. Ms. Wilson replied that municipal water rights functioned differently from individual and agricultural water rights in that municipalities normally were tasked to develop a long-term water management conservation plan as part of their water rights that was required to be continually updated.

City Attorney Klein, responding to a question from Mr. Zelenka, noted that he had not yet discussed the water sale to Veneta with EWEB's attorneys but generally understood that EWEB intended to sell the water wholesale to the City of Veneta rather than directly to consumers.

Mr. Brown agreed with City Attorney Klein's determination that the authority regarding EWEB's proposed sale ultimately rested with the Eugene City Council.

Ms. Wilson, responding to a question from Mr. Brown, noted that partial certification with respect to water rights was intended to show State officials that a municipality was moving forward with its efforts to demonstrate the beneficial use of its entire water allotment.

Mr. Clark, seconded by Ms. Taylor, moved to direct the City Manager to schedule (1) a public forum, with EWEB's involvement if EWEB is willing, in order to provide information to the public about the proposed sale of water: and (2) following that forum, a public hearing on a proposed resolution concerning EWEB's proposed sale of water to Veneta; and (3) a joint meeting with the EWEB Board of Directors before scheduling the matter for council decision.

City Attorney Klein agreed that it was critical for the council to have a conversation with the EWEB board regarding the proposed sale of water before the council rendered a decision on the matter.

Mayor Piercy agreed that a full understanding of the water issues for Veneta and other local areas would be helpful to the council and City staff.

Mr. Pryor hoped that any formal discussions with the EWEB board regarding water rights would include a policy component that addressed the wholesale versus retail sale of water.

Mayor Piercy suggested that representatives from the City of Veneta also be involved in the council's water rights discussions.

Mayor Piercy called for a vote on Mr. Clark's previously stated motion. The motion passed unanimously, 8:0.

B. WORK SESSION: Eugene Community Climate and Energy Action Plan (CCEAP) Update

Mr. Piercy recognized the volume of work that had gone into the creation of the CCEAP and thanked the staff and community partners who had contributed to that effort.

City Manager Ruiz introduced Climate and Energy Action Analyst Matt McRae to provide the update on the CCEAP.

Mr. McRae recognized the CCEAP advisory team members who were present as well as Sustainability Commission members Shawn Boles and Howie Bonnett.

Mr. McRae presented the most recent draft of the CCEAP and reported that a final draft would be presented to the council in the fall of 2010.

Mr. McRae noted that the CCEAP had been generated concurrently with several other planning efforts such as Envision Eugene and the Transplan Update.

Mr. McRae provided background on the CCEAP and noted that in the winter of 2008/2009, the council had directed staff to create the CCEAP for the community with the specific instruction to include a broad range of community partners.

Mr. McRae reviewed the primary goals of the CCEAP for the benefit of the council members.

Mr. McRae stated that staff had been highly conscious in it application of the triple-bottom-line assessment tools to the development of the CCEAP.

Mr. McRae presented information on the CCEAP advisory team members and noted that each of the team members where highly knowledgeable regarding a variety of energy and sustainability areas. Mr. McRae further noted that the advisory team members had been extremely helpful to staff in providing feedback and prioritization regarding the CCEAP.

Mr. McRae described the public engagement process that had been used by staff to develop the CCEAP and briefly noted each of the public outreach events that had been conducted. Mr. McRae also noted the six action areas that had been used to develop the CCEAP during the public engagement process.

Mr. McRae stated that over 500 participants from the community had been involved in the CCEAP public engagement process.

Mr. McRae referred to the copy of the draft CCEAP that had been provided to the council and briefly outlined the contents of the document.

Mr. McRae elaborated upon each of the six main topic areas of the CCEAP and noted how each category related to the overall goals of the plan.

Mr. McRae briefed the council members on the next steps for the CCEAP and noted that those steps involved significant fact-finding efforts, the determination of climate and energy action targets, and further discussion meetings with community partners.

Mayor Piercy appreciated the great breadth of community partners who had been involved in the development of the CCEAP and agreed that the plan needed to be reviewed in relation to other City planning processes.

Mr. McRae, responding to a question from Mayor Piercy, noted that he had conferred with representatives from Lane County and the City's Wastewater division staff to hold discussions on how methane digesters might be of benefit to the region.

Mr. McRae, responding to a question from Ms. Taylor, stated that the appendix of compiled priority action items from the CCEAP was only a different layout of the information contained in the draft CCEAP and did not contain any additional action items.

Ms. Taylor asked if Country Club Drive was in the flood zone. Mr. McRae could not answer the question but stated that the City's flood zones were being reviewed as part of the ECLA process.

Ms. Taylor asked how issues related to airshed and watershed capacity had been incorporated into the development of the CCEAP. Mr. McRae noted that those issues had not been thoroughly discussed during the development of the CCEAP but further mentioned that both the Lane Regional Air Protection Agency and EWEB had each been involved in extensive discussions regarding local air quality and water source issues.

Ms. Taylor hoped that the CCEAP would include references to more direct actions the City could take and further suggested that the council refrain from serving meat during its meetings.

City Manager Ruiz responded to Ms. Taylor's comments and reminded her that there were additional parallel efforts underway to reduce the City's overall carbon footprint and energy consumption levels.

Mr. Clark appreciated the level of detail that had been incorporated into the CCEAP.

Mr. Clark hoped that the CCEAP would incorporate comprehensive and long-term strategies for addressing climate and energy action issues, particularly with respect to various public safety areas of the City's organization.

Mr. Clark planned to closely review the cost and impact elements of the CCEAP and noted that he had a number of questions regarding the long-term economic and environmental impacts of the food security and fossil fuel strategies outlined in the Plan.

Mr. Zelenka noted that he had attended several of the CCEAP advisory team meetings and appreciated the level of input provided by the team members. Mr. Zelenka further commented on several methane digester practices that were already in use throughout the community.

Mr. McRae, responding to a comment from Mr. Zelenka, briefly discussed the context in which the term "climate uncertainty" had been used in the CCEAP.

Mr. Zelenka hoped that the action items outlined in the CCEAP would be specific, actionable and measurable and suggested areas of the plan where those characteristics might be made more evident.

Mr. Zelenka suggested that the items listed in the compiled priority action items list might be renumbered in order to make the information easier to understand.

Ms. Solomon referenced the land use and transportation areas of the CCEAP and commented that certain traffic congestion and energy consumption issues in those areas might be addressed more thoroughly in the Plan.

Mr. McRae, responding to a question from Ms. Solomon, briefly discussed how the term "climate refugees" had been used in the CCEAP to describe the concept where changing climates in areas might make certain geographic areas less livable than others.

Mr. Brown commended Mr. McRae and his colleagues for their work in drafting the CCEAP and looked forward to reviewing the results of the fact-finding elements to be conducted during the next phase of the plan.

Ms. Ortiz appreciated the depth of analysis and the level of effort that had gone into the development of the CCEAP.

Mr. McRae, responding to a question from Ms. Ortiz, noted that representatives from PeaceHealth and the Lane County Public Health Department had contributed to the draft CCEAP. He further noted that while the CCEAP did not contain any specific actions pertaining to local hospitals and healthcare providers, such agencies would continue to contribute to the various essential services strategies outlined in the plan.

Mr. Pryor noted recent conversations with Mr. Rexius regarding economic volatility and environmental uncertainty and noted the importance of carefully and thoughtfully executing many of the action items outlined in the CCEAP.

Mayor Piercy expressed that the CCEAP would help the City manage its resources with respect to various environmental and economic concerns.

City Manager Ruiz, responding to a comment from Mr. Zelenka, suggested that the specific resource implications of the CCEAP with respect to the City's organizational structure would be discussed in greater detail as the plan moved forward to full implementation.

Mr. Clark encouraged the Council members to conduct the discussions surrounding elements of the CCEAP through the framework of raising the standard of living for the citizens of Eugene. Mayor Piercy agreed with Mr. Clark's statement.

Mayor Piercy adjourned the meeting at 1:31 p.m.

Respectfully submitted,

Sandra J. Stubbs Deputy City Recorder

Beth Forrest
City Recorder

(*Recorded by Wade Hicks*)