

- CALL TO ORDER** The Regular meeting of the Seaside City Council was called to order at 7:00 PM by Mayor Barber.
- ROLL CALL** Present: Mayor Jay Barber; Council President Randy Frank; Councilors Dana Phillips, Steve Wright, Tom Horning, Seth Morrissey, and Tita Montero.
- Absent: None
- Also Present: Mark Winstanley, City Manager; Dan Van Thiel, City Attorney; Jon Rahl, Assistant City Manager; Dale McDowell, Public Works Director; Russ Vandenberg, Convention Center & Visitors Bureau General Manager; Dave Ham, Seaside Police Chief; Joey Daniels, Seaside Fire Chief; Kevin Cupples, Planning Director; and RJ Marx, Daily Astorian/Seaside Signal.
- AGENDA** Mayor Barber stated we need to amend the agenda as presented. Our Student Representative is ill and not able to be here tonight and then on down the agenda, Sheila Roley with the Seaside School District had a death in her family and cannot be here tonight to present. We'll put her back on the agenda as soon as possible to give us an update. Mayor Barber further stated he would entertain a motion to approve the agenda as amended.
- Councilor Phillips so moved with a second from Councilor Morrissey; carried unanimously. (Phillips/Morrissey)
- COMMENTS - STUDENT REPRESENTATIVE** Briana Boyd, Seaside High School Student Representative, was absent.
- COMMENTS – PUBLIC** Mayor Barber stated at this time he will open the floor to public comments. If you would like to comment on something that's not on the agenda tonight, please come and identify yourself, give us your address and limit your comments to four minutes.
- Bonnie Woodman, 451 16th Avenue, Seaside, stated she went to the Planning Commission meeting on January 15th and presented precisely what I'm going to say again tonight but have condensed it to four minutes. They suggested that I come in and speak before you. Also, my issue is about vacation rental dwellings. I live next to a vacation rental dwelling that has been a problem for me since 2015. This is 2015 file. This is 2016 file, 2017, 2018 file is a big one and the beginning of 2019. These are all complaints. I've had two complaints about vacationers who have come to this particular rental dwelling. I have tried to address it every which way I can and I am quite frustrated about wanting to call the police in the middle of the night to come out and shut people up. I'm not able to get a hold of the property manager. They've been under numerous property managers. I have come to Kevin Cupples personally, had several meetings with him most recently in August of last year and he really didn't address my issue until December. He's trying to do his best, but I've had to put up with this since 2015. There's one complaint violation after another and something needs to be done. I can't believe I'm the only one out here in the world that has this kind of issue. I had given the Planning Commission, I spent \$35 to have copies made. Unfortunately, I don't have enough for all of you tonight, but may I come up and present these? These are the complaints that I've had. These are the ones that are in my file. I have pictures. This one is for you. The people, the owners of the home blatantly told me that they built it and got permission through the Planning to build it primarily as a vacation rental. Seaside relies on vacation rentals. You need the people to come in, pick to spend the money in the city, but by cracky, these people need to listen to the rules. I don't know how it's presented to them when they make their rental system. I don't know how it's done inside the house. This house I have seen one violation after another. I've asked Kevin Cupples to make the evaluation of the place. He has done that for me on the website. They specifically make mention of a neighbor, which is me. They don't name me as being someone who watches very carefully. My desk happens to be right smack dab looking where they are. I'm not at my desk all the time during the day. They've had violations of nuisance dogs, dogs running at large. That large noxious, noxious, that vegetation and noise that goes on at nighttime. I've asked Kevin Cupples to take a look at the Lincoln City VRD rules and asked him to take a look at the host compliance website and I've asked him to look at the vacation rental rules. Please, please try and help us out here. Please.
- Mayor Barber stated thank you for the information. I think the audience would like to know the Council would be looking at the vacation rental regulations and it is the top goal of this Council.
- Erin Barker, 2300 Lewis and Clark Road, Seaside, stated she manages a number of vacation rentals and have for almost 20 years with very few problems. I can't really address any of the history that Bonnie has had, but I've agreed to basically manage this owners guests. This last weekend we had guests in and I had complaints even on them and I do know, I mean I felt like I was stalking them. I was there for two trips on Friday night, true trips on Saturday. I was there before checkout on Sunday morning parking and various areas of the street just to monitor it and watch it and see what was going on.

I know they went out of their way to not be noisy. These were young people, young adults. They're actually locals that grew up here. A lot of you probably know them. I don't know if I should say who they are, but I've looked on Facebook and saw who their friends and family were and I'm actually friends with these families and who they know and I talked to one of the middle school teachers that I know well and asked about him. I called my nephew, I looked them up online and the newspaper, and they were both on honor roll in college. They got married last year. She teaches elementary school at Corvallis Elementary and he's a Structural Civil Engineer. When I talked to them, he said, you know, they did have some interaction with her, but he said we were so attentive to everything. I've even told them the hot tub rules are nine. Technically they're 10, but it figures somebody who's in the hot tub and realizes who it's 9:15, maybe we should be thinking about getting out. That gives them an hour of, hey, you've had an hour where you're still in compliance. But when I talked to Max, he said we did have some music on. We didn't have to loud and just to be sure he went outside to listen. I don't know what else, what more I can do other than stalk the property, interview the people, monitor it, you know, literally I will do everything I can but I do need to be, and I sent an email saying I am the first line of defense if you have an issue, I am not going to put up with it. You need to call me. I apologize if I misunderstood about noise in the hot tub. She'd emailed me with the comment that I had not paid attention to detail because I had complained about previous weekend which I did not know about. The owner and I are just getting our systems together on how this is going to work. I just assumed that that noise was from the hot tub and she said, no, I wasn't paying attention that if they were just talking loud inside. So I apologize that I jumped to that conclusion. But I had anyway, I give you my word. I'll do the best, but I do need you to call me if there's a problem because I can't do anything about it on Sunday if you've had issues in the evening. So I can't address any of the history. I can only address from this last weekend and forward.

Joyce Hunt, 510 13th Avenue, Seaside, stated I'm not going to talk about the rental situation. Oh, I could very easily add a few things like parking situations. But what I would like to talk about. Well first I'm a Ham Radio Operator and as part of my connections I get the Clatsop County Fox com newsletter, which is the newsletter for emergency communications for the whole county. And in last Fridays they had this article about smart meters and it was real scary. I mean, it was labeled enough but it had all these things and it talked about these smart meters that, you know, put out RF Radiation and stuff and may or may not do what they're supposed to do. And then I got the card today so I knew and I also looked at some stuff on Wikipedia and I'm real confused. I don't know if this is a good thing. I mean the one thing I'm nervous because I am a Ham Radio. They talked about different scenarios where my antenna could actually, it can do this harmonic thing or it could destroy or damage the smart meter. And then there's all sorts, I mean in the scenario they were talking about garage doors opening and all this stuff. I don't know, but what I call the number on here she said you're not affected yet. I said I've got this card and she said you'll get the letter in two months. And then a month after that you get a phone call. Because in the article I mentioned about being able to opt out. It's \$36 a month. My bill last month was \$31, so I don't know if there's a way to get more information in the newsletter talking about going to the County Commissioners but I don't know and that's probably a maybe.

Mayor Barber stated he asked the general director in this area to come and speak to the Council.

Ms. Hunt stated she would like to have more information because I don't know whether to get angry or not. My meter is right outside my kitchen window, it is where I stand drinking my coffee every morning. It's just right there and I don't want to have to pay 36 bucks a month just to opt out. I'm not getting any more radiation then I have to.

Councilor Montero stated this has come up and the County Commissioners meeting and I think they will also be bringing in a presentation.

CONFLICT

Mayor Barber asked whether any Councilor wished to declare a conflict of interest.

Councilor Montero stated this was not a conflict of interest but I do need to report it ex- parte communication. On item 10-d, one of the bidder's contacted me.

Mayor Barber stated as I understand that Councilor Montero has that information recorded and that doesn't mean that you can't participate in the discussion and the vote.

Councilor Montero stated that's correct, she checked with Dan.

Mayor Barber asked Dan if that was correct.

Dan Van Thiel, City Attorney, stated that is correct.

No one else declared a conflict of interest.

CONSENT AGENDA

Mayor Barber stated he would entertain a motion to approve the consent agenda.

Consent Agenda: Payment of the Bills - \$1,226,405.82, and Approval of Minutes January 14, 2019.

Council President Frank so moved with a second from Councilor Montero; carried unanimously. (Frank/Montero)

UNFINISHED BUSINESS:

**VACANCY –
CITY TREE BOARD**

Mayor Barber stated there was one vacancy on the City Tree Board. Council was accepting applications for the vacancy.

**VACANCY -
AIRPORT COMMITTEE**

Mayor Barber stated there was one vacancy on the Airport Committee requiring the person to be a resident of Seaside. Council was accepting applications for the vacancy.

**VACANCY -
PLANNING COMMISSION**

Mayor Barber stated there was one vacancy on the Planning Commission with one application received from Robin Montero. Mayor Barber stated the process for applicants is to nominate the applicant and then set up an interview at the next meeting.

Councilor Wright moved to nominate Robin Montero for the Planning Commission and get interview set up with a second from Councilor Morrissey; carried unanimously. (Wright/Morrissey)

Mayor Barber stated interviews would be conducted prior to the February 11, 2019, City Council meeting.

NEW BUSINESS:

**PUBLIC HEARING –
MAIN AND MAIN
CAPITAL GRPOUP
APPEAL 19-068HOZ**

Mayor Barber stated this was a public hearing for an appeal regarding the Planning Commission highway overlay zone request by Main and Main Capital Group to build a retail building. This is an important event. Mayor Barber called on Kevin Cupples to explain.

Kevin Cupples, Planning Director, stated he needed to let everyone know that individual's testifying are reminded their testimony and evidence must be directed towards the applicable criteria or other criteria in the plan or land use regulation which they believe is applicable to the decision and failure to raise an issue with sufficient specificity to allow the decision makers and parties an opportunity to respond to the issue. Precludes appeal for the land use board of appeals on that issue. Mr. Cupples further stated the applicant is appealing the Planning Commission's approval of the Grocery Outlet's request based on the required improvements that were established under the Commission's final decision 18-068HOZ. 18-068HOZ is a Highway Overlay Zone request by Main & Main Capital Group to build an 18,000 sq. ft. retail building at 825 Avenue N (T6-R1O-S21DD-TL200, 500 and 10316). The subject property is zoned General Commercial (C-3) and the primary access would be from Avenue N. The applicant's plans would utilize the undeveloped portions of S Irvine and Avenue O in conjunction with the proposed development of the surrounding property. The new commercial building would be located south of Avenue N & the Coast Hardware property. The new commercial building (planned as a Grocery Outlet) would occupy the eastern portion of the property while the parking would be on the western portion. The two portions of property are separated by an undeveloped portion of the South Irvine Street right-of-way and the property is bounded on the south by the undeveloped portion of Avenue 'O'. The new retail store is an outright permitted use in zone; however, the Highway Overlay Zone requires a Planning Commission review of any use that will generate a significant increase in the number of vehicle trips. The applicant/appellant's representative has submitted a memorandum (Attachment 2) that explains why the required improvements identified by Commission are not lawful along with additional supporting information from the applicant's traffic engineer (Attachment 3). The appeal is primarily based on case law that limits the requirements that can be placed on an applicant. Planning Commission Public Hearings: The Planning Commission reviewed the original staff report and heard public testimony during their initial hearing on October 2nd, 2018. The request was continued and additional testimony was taken at two addition hearings (November 20th & December 4th). Due to the amount of information in the record (applicant's submittals, staff report, written and verbal testimony reflected in the minutes), all of the file information will be provided in electronic form to each City Council member & the Mayor.

Planning Commission Action: On December 4, 2018, the Seaside Planning Commission closed the public hearing and after deliberation, they approved the above referenced request.

At issue is the following provision that was included in their decision: "Approval to establish the new commercial building at 825 Avenue N is with the understanding the turn lane

recommended under the TIA, or a right-in/right-out with a turning barrier at Avenue N, will be developed in accordance with any approval standards established by ODOT before the Grocery Outlet is open to the public for retail sales." City Council Action: The Council will conduct a public hearing to review the appeal, take additional testimony since this is a de novo hearing and it is not strictly based on the record. Once the Council completes their hearing process, they will make a final decision. The City Attorney and staff are currently reviewing the appeal information and they will be able to provide additional information during the hearing. Attachments included in packet: Planning Commission's Decision, Appeal Form & Memorandum, and Traffic Engineer's Memorandum & TIA.

Planning Commission Decision: On December 4, 2018; the Seaside Planning Commission conditionally approved the above referenced requests in accordance with the provision in the City of Seaside Zoning Ordinance. The Commission's decision was based on the oral and written testimony provided during the hearing, the information submitted by the applicant, and the staff report. Approval to establish the new commercial building at 825 Avenue N is with the understanding the turn lane recommended under the TIA, or a right-in/right-out with a turning barrier at Avenue N, will be developed in accordance with any approval standards established by ODOT before the Grocery Outlet is open to the public for retail sales.

Approval to establish a new retail commercial building (approximately 18,000 sq. ft.) within the Highway 101 Overlay Zone is subject to all of the development standards in the Seaside Zoning Ordinance. In addition to the findings, justification statements, and conclusions adopted by the Commission; the request was approved subject to the applicant satisfying the following condition(s):

Condition 1: The applicant must provide a detailed exterior lighting plan. The plan is intended to help document that all exterior lighting fixtures will be designed to limit glare in accordance with the City's Outdoor Lighting Ordinance and conform to the exterior lighting provisions of the Highway Overlay Zone. Review of the plan does not ensure full compliance with the lighting restrictions; therefore, final site lighting is still subject to inspection after installation. Any necessary mitigation measures are the responsibility of the applicant and/or owner prior to final approval.

Condition 2: The applicant will need to provide detailed floor plan in order to document the number of parking spaces required for the use will be sufficient along with the estimated number of employees within the proposed building.

Condition 3: The handicapped parking spaces must be relocated so they are the closest spaces to the accessible route into the building as determined by the Building Official during plan review.

Condition 4: A striped pedestrian walkway must be provided to the segregated parking spaces that are located across South Irvine and the walkway adjacent to the spaces located north of the proposed building.

Condition 5: The required bike parking must be incorporated into the final development plan for the property.

Condition 6: The applicant must provide an engineered drainage plan that indicates how proposed drainage facilities will accommodate storm water runoff from the parking lots and roof drains. The plan would also need to address water quality measures that would be incorporated into the system in an effort to limit oil & sediment from entering the public storm water system or local groundwater.

Condition 7: The applicant's proposed improvements within the City of Seaside rights-of-way must be completed in accordance with the standards established by the Public Works Department.

Condition 8: Minor modifications to the applicant's proposed plan must be reviewed and approved by the Planning Director. These could be required in order to comply with other code issues applicable to the request or reduce impacts to the neighboring property. Any major changes or conflicts over a proposed modification will be reviewed with the Planning Commission prior to the approval of any development permits. Adherence to these conditions is a matter of compliance with the Seaside Zoning Ordinance. Violations can be subject to the penalties identified in Article 12 of the Ordinance. Although they are not conditions of approval, the following is a reminder to the applicant. As with any permit, the applicant must meet all applicable standards in the Seaside Zoning Ordinance such as erosion control provisions and any other applicable City of Seaside Ordinances. Mr. Cupples further stated it has one of the precursors to the development. They were indicating that a center turn lane that was actually identified in their traffic impact analysis that center turn lane would need to be completed. The planning commission and also put in an alternative to that saying that an alternative could be a right in right out. The applicant's attorney has represented that is, basically an unconstitutional condition of approval and has challenged that. You've also got information from an opposing attorney indicating the opposite of that. And so you've, you've really got two different sides to that same story. I do know that, with land use actions, when you start to step outside of a piece of property, other than making someone do something on their property, the further you get off the property the harder it is to make justifications for what your conditions are. I will say that staff was probably the one that kind of led the Planning Commission into that position thinking that if we're not telling them they have to do it. It was kind of being left open of saying, well, I don't know who's going to do it. I'm not making them do it. And I'm not saying ODOT is going to do it. In the end the applicant's defense, we were under the impression everyone was at the onset that ODOT's project to actually provide a center turn lane was going to extend down there and then that basically got pulled out before the final decision was made.

The City Council has information from two different attorneys and you've got your City Attorney here as well. Mr. Cupples further stated he would try and answer any questions that

you have but I'm here to try to respond to things, but you also have to hear from the applicant's legal counsel and the opposing. Appeal Provisions: The Planning Commission's decisions may be appealed in accordance with Section 10.068 of the Seaside Zoning Ordinance which states: Any action or ruling of the Planning Commission pursuant to this Ordinance may be appealed to the City Council within fifteen (15) days after Notice of Decision is provided pursuant to Section 10.066. Written notice of the appeal shall be filed with the City Auditor. If the appeal is not filed (or postmarked) within the fifteen (15) day period, the decision of the Planning Commission shall be final. If the appeal is filed, the City Council shall receive a report and recommendation on it from the Planning Commission and shall hold a public hearing on the appeal. The appeal must be filed at the Planning Department (located at 1387 Ave. U) or mailed to 989 Broadway, Seaside, OR 97138. The appeal must include the applicable fee of \$625.00. The Notice of Decision date and appeal deadline are listed below. Appeals must be submitted or postmarked by this deadline. Date of Decision: Wednesday, December 12, 2018. Last Day to Appeal: Thursday, December 27, 2018. Mr. Cupples further stated there was written testimony provided to the City Council on January 25, 2019, and January 28, 2019, received from Karl G. Anuta, Law Office.

Appeal Paperwork Information received December 27, 2018, 5:00 PM. Main and Main Capital Group. Property Address: 825 Avenue N (T6-R10-52100-TL200, 500 & 10316). Authorized Representative Dave Phillips, Vial Fotheringham LLP, Lake Oswego. Appellant is a company seeking to commercially develop a retail space at 825 Avenue Seaside, Oregon. While the Planning Commission has conditionally approved the development, several of the conditions imposed are unconstitutional. Moreover, compliance with those conditions would render the project economically infeasible. Appellant objects to the Planning Commission's requirement that a left turn lane (or right-in/right-out with turning barrier) be added to the adjacent road despite the present road configuration allowing for adequate and safe access to the site. First, the Planning Commission added this requirement subsequent to the hearing and final decision by amended, which deprived appellant the opportunity to present countervailing evidence, this manner of decision deprived appellant of the notice prescribed by ordinance and its due process rights under the state and federal constitutions. Second the Planning Commission's requirement is unconstitutional under *Dolan v. City of Tigard*, 512 U.S. 374 (1994) and progeny. Third, the requirement violates decisions of Oregon's Land Use Board of Appeals. Appellant asks the City Council to alternatively. (1) reverse the Planning Commission's decision by striking the road modification requirement; (2) remand the decision to the Planning Commission to permit Appellant to adequately respond (through testimony and documentary evidence) to the condition; or (3) reform the condition to conform it to state and federal statutory and constitutional law.

Mayor Barber stated before he opens the Public Hearing on the appeal, there were a few procedural issues to take care of: First does anyone wish to object to this item on jurisdictional grounds?

There were no objections.

Mayor Barber stated second, he needed the Councilors to state if they have any conflicts of interest or ex-parte contacts they need to disclose?

There were no conflicts of interest or ex-parte contact disclosures from the Council.

Mayor Barber stated third, he would ask staff to give a brief report which Kevin Cupples had explained to Council. Mayor Barber asked to hear testimony from the appellant or original applicant in the case.

Dan Dover, Main and Main Capital Group at 6600 Paige Road, Texas, stated thank you for hearing our appeal this evening. Again, we're here last May and we made it this far with an approval. I think it's important to state that the Planning Commission has approved our application with many long hours with Mr. Couples and going through all the details, teeing everything up to this point. Kevin, we thank you very much for your time and getting us to this point. Really, this evening we're here to discuss the conditions that were placed on the approval, which really are insurmountable for our development or any development for the use of this nature. We will have our counsel speak to that as well and Michael Ard our traffic engineer is here this evening as well to speak on that. When we were here a year ago there was some concern over something that we all talked about who the tenant was and since then we have been able to secure them 100 percent for a commitment to come to Seaside. And so obviously that information has now been shared and it is public and is Grocery Outlet and they are very interested in becoming a member of the community with their operating model. They are not a franchise system and not a corporate system but they have operators that own this business, live here locally, they hire locally. When you do research on Grocery Outlet, you will find that more so than potentially other corporations that aren't started in Seaside, they will commit themselves to Seaside and they will do a lot of good for the community. Beyond that, there is the obvious impact of bringing jobs. I'm running the commerce for the city and knowing that this is a, I know in my youth growing up, this was very much a tourist community and is where my family would come in the summertime. So just know that I went over to Safeway tonight to take a look at some prices to do a little comparison and I think it is very easy to say that it would bring at a minimum, an average, a 30 percent discount and competition for the locals who live here, maybe even more.

We will be prepared to provide some of that evidence as a follow-up to this hearing. But I think that for the local residents that live here throughout the entire year, this really is a much-

needed benefit for the community to create some competition and maybe leveled the playing field a little bit. Mr. Ard will provide some information proving that ODOT is on the record stating that they will fund this project regardless of whether the overall project is funded, which as we started discussing with them last March.

Mayor Barber asked Mr. Dover to re-state that information about ODOT.

Mr. Dover stated they are on the record and we will provide information this evening that they, will fund this project. They will complete the project regardless of whether there's funding for the overall project. So the turn lane specifically. So we feel that burden has unduly been put onto us when really it's a commitment by ODOT. And so we really, what we're trying to figure out tonight is a solution to help the city figure out how to get what the city wants. And then pave way for the development was property is zoned commercial. I think the intent is that this property be developed commercially long-term. Mr. Dover further stated with David Phillips information this evening and Mr. Ard's information you will see that we've put our best foot forward to secure the information and secure commitments from ODOT to try to comply with what the city wants. So with that, if there are any questions, we want to hopefully resolve as much as we can this evening. We're here to answer any questions that we can and if there's any questions he would be happy to answer them.

Mayor Barber asked if there were others on your team that want to speak.

Mr. Dover stated yes, absolutely. Mr. Ard would start with the engineering.

Michael Ard, Ard Engineering, stated if it's acceptable to the Council he would set up a display simulations of the intersections that you're talking about to just run in the background. Simulations are run at two times speed because it always looks ridiculously slow being in real time. Mr. Ard further stated he was the transportation engineer that Main and Main Group hired to look at the site and he has done that in great detail. Mr. Ard prepared the Traffic Impact Study (TIS) as well as a subsequent update which you guys have in your record and I'm not going to be-labor most of the points of the TIS because I think most of the points of the TIS really aren't points of contention and I'm going to focus on the things that have been a subject to questions and concerns. The first thing that I want to talk about is the representations that ODOT has made to us because early on in the project prior preparation of the transportation impact study, this was something that I investigated just as a matter of due diligence for my client. I recognized that there's a high likelihood that a left turn lane was going to be warranted here and he wanted to know what were the potential impacts from ramifications of that on his project and I was rather surprised when what would responded to me and told me that they had a fully funded project to construct that in the turn lane would be in place in the summer of 2020 and I relayed that news to my very happy client and we proceeded from there to do the traffic impact study. Now I don't want you to just rely on my saying that but wanted to provide you the direct evidence that we saw and heard and that's in the form of this email that I printed out for each of you. You'll note that there is some highlighted material on there. We're going to keep one for myself and you guys can take the rest. So the first email is the one from Keith. I'm sorry for Matthew to Keith and myself that says, I'm not sure if you know this already, but there's a STIP Project to widen the highway from Holiday Drive, North to Avenue G, which is the particular section that we're concerned about set for construction in 2020. The highlighted thing on the third page. There's one sentence in there that I wanted to bring to your attention just again a representation by the Oregon Department of Transportation and it says if we cannot identify additional funding to cover construction costs and have to go back to the original scope, we would still include the center turn lane south for the proposed Avenue N. So we were not only represented, that ODOT was willing to build this improvement and that had been funded and scheduled, but that even if you if budget constraints were to occur on the project that the critical part for our project is still going to be part. And we did rely on that assertion. Obviously I completed the traffic impact study and ODOT agreed with my conclusion that the turn lane was warranted at this location. They also let me know that there was about a \$10,000,000.00 project cost associated with it and I'm sure you guys are well aware of the scale of budget that we've been talking about. Following completion of the traffic impact study, we got review comments from ODOT in which they said, it looks like we don't have budget for doing the entire corridor and we're going to do the North end and we're not going to extend as far South as Avenue 'N'. Of course, that's after we're fully committed to the project at this point and that also goes against the representations that we have that even given budget constraints that this was a fun project and I believe that's what my colleague was referring to when he said that made the representation that this would be funded, regardless.

Councilor Montero stated she had to ask the question does that person still work for ODOT.

Mr. Ard stated he believed the answer is yes. I don't think there's ever been any ramifications here. Clearly there was a change that happened there and I don't know whose fault that was in ODOT, but we did rely on their representations and as much as the attorney representing an opposition party indicated that it was a mistake on my part to believe that that was going to happen. I think there was good reason for me to believe and to rely on that statement, so I don't believe that that was an error on my part or indeed on the part of Main and Main in getting us to where we are today. In terms of the costs that would be borne by Main and Main if they were to build this left turn lane.

We're talking about two to three blocks of improvements out of ten overall for the project. So on that basis I made a ballpark in the air estimate that said it's going to be about

\$2,000,000.00 to \$3,000,000.00. If you drill down and look at what's required by ODOT for a left turn lane they require a storage length of the minimum of 100 feet. They require a transition area. They require taper, they'll require it to be continuous down to Holiday where it's widened out to a three lane cross section and overall I'm looking at a 1,057 to 1,282 feet of lineal improvements and that's out of a total project length of 2,500 feet for the things so that \$2,000,000.00 to \$3,000,000.00 estimate may actually be on the low side and when I compare that to the cost of the improvements that were proposing to build for building in the range of \$1,500,000.00 to \$2,000,000.00. It's really how to scale and just kind of shocks the conscience to think that we'd have to spend far more than that for an improvement to a public to an existing public facility that we were told was going to be funded by others. As we got into this project and I think that's where we ended up with our initial assertion that what's being asked is disproportionate to the scale of what we're doing and we have the city responding to that and acknowledging that that the ask is disproportionate. On multiple occasions including on the record in front of the Planning Commission. As we found that it was a disproportionate, we wanted to look at, okay, what happens if this left turn lane doesn't get built? And that's the simulation that of course has stopped. This is advanced technology that looks for my face so I actually have to get my face right up there. So you can see here that the model that we used to examine the future conditions during the PMP Dowers without that turn lane and you can see the cars are actually color coded, white cars are through traffic and a blue card is one that's turning left so you can see that this car is trying to turn left holding out there, that you can see the traffic flowing on the highway. You can see occasionally a vehicle stopping or slowing to make a turn, but it's still working. Now I knew this and I knew from the results of my analysis that the left turns into the site were going to eat up about eight percent of the capacity of that southbound lane also knew that the southbound lane under existing conditions was running at about 42 percent of capacity. 43 percent actually, I think meaning that when I add that 8 percent, it's running at about 51 percent of capacity per the Oregon Highway Plan. ODOT allows intersections in your city to operate at up to 90 percent of capacity at this location.

Councilor Frank asked in terms of operations, did you do that at one particular time of the year? Summer and winter.

Mr. Ard stated that was an excellent question. The standard that ODOT has laid out for most jurisdictions is based on what's called the 30th highest hour. The design hour for the year, and in the City of Seaside that standard was actually changed by agreement between the city and the Oregon Department of transportation to be for average conditions throughout the year. So that does represent typical conditions, not summer peak conditions. We recognized and acknowledged that at the Planning Commission as well as traffic would be more congested during the summer peak season than it is in this analysis, in this representation. That doesn't change what ODOT's standard is and the fact that we meet their operational standard absent the turn lane because that is the relevant operational standards that you have. We do recognize that under peak and heavy traffic conditions, there are times when there's a queue of traffic that's lined up northbound here that will extend beyond Avenue N. And under those conditions, the only way that people were making turns is when somebody lets them make the turn. They leave the gap in there and that's going to be necessary whether there's a turn lane in there or not. Things are congested in this community and we recognize that and we recognize that the left turn lane would be a benefit here and what we'd sure like to be able to see that left turn lane, we simply can't pay the price tag that's associated with it in scale with this project. Mr. Ard further stated because there are not just an operational potential concerns, but also safety concerns. I looked at the entirety of this corridor where there's the two lane cross section and looked at the 10 year history that's available through the Oregon Department of Transportation's crash analysis and reporting unit, and I found that and I identified in my supplementary letter, but there were 38 crashes that occurred during that 10 year period. That's about three point eight crashes, a little less than four crashes per year at the collection of intersections, not specifically at any intersection. The highest crash location had 11 crashes during that 10 year period, which were accepted just barely more than one per year. And the severity of those crashes was generally low with the vast majority of the crashes, either being property damage only or what they call an injury see incident, which is defined as a possible injury or complaint of pain. If somebody's been involved in a crash and the police arrive on scene and they say, I'm not sure that I'm okay, that's going to be an injury. See incident. There were a few that were slightly more severe. There were no fatalities and no incapacitating injuries. So there were a few non incapacitating injuries that were reported and I looked in detail at those for the entire 10 year period. There was one that possibly could have been prevented by the existence of a left turn lane and again it was not an incapacitating injury, so we're not talking about a great frequency of crashes. We're not talking about a high severity of crashes and we're talking about single intersection here that already has the two lane cross section under existing conditions. So we didn't believe that we're going to significantly exacerbate an existing safety problem as documented by ODOT. On the basis of meeting the operational standard and the fact that we don't have a significant detrimental impact to safety, I concluded that it is possible for you guys to approve this project. In the absence of the turn lane. We'd still like to see the turn lane if ODOT is willing to provide that and we think that it's reasonable of the City to ask for that of ODOT. They're still seeking funding and have been actively. And I would, if I were you guys, be strongly encouraging them to continue that pursuit.

Mayor Barber stated you make any comment about the proposal of a right turn only lane.

Mr. Ard stated that is exactly what I was getting to now, excellent timing. So the one other representation that was made by the opposing attorney is that we had ample opportunity to

provide any information we wanted to in the record, but the simple fact is that there was no discussion of a right in, right out as a solution to this problem prior to the closing of the public record. It was something that came up at the suggestion of one of the Planning Commission. And actually I think it was good outlet box thinking to come up with that idea. They thought it was a late date, the problem with that is that it didn't afford opportunity for us to explain why we haven't proposed that already. So we have a right in, right out restriction. Things would change a little bit in terms of the operation from what we're seeing right here. Obviously we wouldn't see the left turns in here. We wouldn't see the left turns have helped either. The problem is that traffic we'd like to say flows like water. When you block up one direction, it moves to another direction. And in this case there are other places where you can go. This is Avenue N where I'm right here with the closure of avenue in the reason really access further down to the south. There is a public street connection at the backside, an over here, and I can't remember the name of the street off the top of my head, but it's a local street that runs behind the apartment complex and will ultimately connect through to our improved Avenue 'N'. And the best case scenario is that if you put it in the right and right now the people that are heading southbound make their turn here at avenue lamb instead go to the backside down this alleyway and come into the site so we haven't stopped to the left turns from occurring, but we have moved from one block to the north where we'd expect pretty much the same impact from those, but the reality isn't quite that good and instead of doing that, what's likely to happen is that the people that turn on Avenue 'M' are going to want to get to their destination as quickly as possible and they're probably going to cut in front of the Coast Hardware Store into the parking lot where people are walking to their cars. They're not going to make Coast Hardware happy in the process and it's not something that our development would be able to control. It is off site, but it is something that could reasonably be expected to happen. Even those people are the ones that think ahead once the don't think ahead are the ones that get to here and they see that they can't make the turn in advance and they go and they continue south and they look for the first opportunity to turn around and you got this Mexican Restaurant but this driveway open right here. So they make their left turn into the Mexican restaurant. Same left turn that you wanted to prevent just slightly to the south, just a little bit closer to where Holiday tees in. And I had this skewed the angle here just so they would understand what the turn lanes meant by the way in the model, but as soon as they make that turnaround, they didn't have to turn right back onto the highway and then make a right turn. So we've added traffic to the intersection. We haven't eliminated the left turn. Traffic flows like water and when we put up obstacles to it, it works its way around them. We have to think about those secondary impacts are those better than what we were trying to prevent in the first place. And as I looked at this, the answer was no. So for that reason, we didn't recommend the right in right out restrictions. Mr. Ard stated he was happy to answer any of the other questions that you guys might have.

Mayor Barber stated does anyone else from your team what to speak to.

Mr. Ard stated one other thing that I'm being advised I should raise is the volume of traffic on the highway with and without this project totally increase in traffic that we would expect associated with this as three to five percent of the highway traffic. So again it goes to proportionality and the scale of the impact that we're having versus the scale of the improvement that would be required if we were subject to needing that left turn lane.

Councilor Morrissey stated on Avenue 'N' when they are exiting northbound on 101, have you guys considered a right hand only turn lane to get back onto the highway and the dedicated left hand to go southbound.

Mr. Ard stated he thinks that is something that probably could be done within the scale of this development. There is some room out there for a potential additional lane width. I'm not sure that it would benefit traffic trying to get off of the highway and solve the left turn problem, but it would potentially reduce the queuing length on exit. It's kind of a separate issue, but if that's something that you guys were interested in, it is possible. Again, it's not a situation where we're hitting the limits of what the capacity is for that approach. I think for that one you were in the range of about 48 percent of capacity on that approach. The delays are just not significant there. Mr. Ard further stated he just wanted to verify that what I told you is correct. I'm flipping through to the results of my analysis over that westbound approach at Avenue 'N'. It is a 53 percent of capacity for the West boundary for yourself. Again, it's not very close to maxed out.

Mr. Dover stated could he interject one comment there. I think the question is could you restrict it to a right out only, but still allow a left.

Councilor Morrissey stated he was just saying separate the right to traffic going northbound and a separate exit with that other direction.

Councilor Wright stated quite often you mention in here and use the word warrants and warranted can you explain why it appears that ODOT says this is warranted, but you're saying we don't need it.

Mr. Ard stated the idea of the warrant is it's a threshold at which you should be considering an improvement. The most common one that he deals with is traffic signal warrants and I think it's a good example. In this case, a traffic signal warrant has a minimum volume that you need to see on the major street and on the minor street approaches.

If you don't meet that warrant you're not allowed to put it in a traffic signal. And there's a reason for that. It's a little bit counterintuitive because people tend to think of traffic signals as

being a good thing. You get one and things work better, but the reality is that when you put in a traffic signal, you're interrupting the flow of traffic. You're creating new situations where people are stopping. You're reducing the ability of the through street, the major movement to serve traffic, so there are some operational tradeoffs that occur there and basically the engineering profession has said until you reach these minimum volumes, you shouldn't be doing this. There's not a net benefit. Once you meet the warrant, you're allowed to put in a signal. It does not mean you're required to put in the signal and in fact, in many cases you're still not allowed to put in the signal for another reason. It creates some new problem. There's a similar situation with respect to left turn lane warrants. Meeting the left turn lane warrants means you're allowed to consider installation, but it does not mandate that installation and in fact when you meet left turn lane warrants and ODOT in this case not only agreed with us but wanted to see it as part of the project. What happens from there is that their state traffic engineer has to explicitly approve that installation. It's not something that's automatic. There has to be a request made. They have to look at it and they say, okay, is there something that we're missing here. Is there some reason why we shouldn't be allowing this turn lane to go in. And then if they decide that there isn't a problem with it, at that point they would allow it. So warrants are a little bit different than what most people think of. It doesn't mean once you're warranted that means you do it. Rather it is. Once it's warranted, I'm allowed to do it, not mandated to do it. So in this case, again, we agreed with the warrants are met and ODOT has acknowledged that we have acknowledged that. But the question before you guys is not whether it's a good idea to put it in because we believe that it is but rather whether it can be required.

Councilor Wright stated following up on that why does ODOT say this shouldn't be conditioned. Your project should be conditioned on the installation of the left turn lane. I realize I'm asking you what ODOT.

Mr. Ard stated yeah, it's purely speculation on my part, but my take on that is that the reviewer in this case is looking at the material, in the record associated with the traffic volumes and flow and saying we believe it's a good idea to have a turn lane. I think that was actually the case before this project came online or they wouldn't have talked about doing the corridor wide improvements to begin with. The analysis actually showed a nine left turn movements occurring during the PMP gallery, which is just below their threshold, the minimum threshold of 10, making the turn during the peak hour, which warrants are satisfied. That's actually a little bit of an artifact of the way that we do our numbers because we have to look at the highest volume hour of the day. The reality is if you look at the actual turning movement data, you'll see an hour that occurred 15 minutes later than the one we studied during which there were 10 vehicles that made that turn. It actually meets the warrants under existing conditions. So in terms of ODOT thinking, their technical analysis person is looking at this. They're seeing that it's warranted. They know that it was warranted, whether this project was done or not, and they're saying, it's reasonable to be asking this. The question that they don't ask and didn't need to ask is what is proportional to the impact of this development. What's the limit in terms of Nollan, Dolan and Coons and the case law and that's not something that they touch on at all and they're in their letter and that that really falls to the responsibility of the jurisdiction that writes the conditions of approval to do that kind of balancing test and say is this proportionate or is it not. We think that balancing test is way beyond failed in this case.

Mayor Barber stated I think we've heard well from you and there may be questions. At this point I'm going to ask, are there other individuals in favor of this request that wish to speak?

David Phillips, Vial Fotheringham, LLP, Lake Oswego, stated he was the Land Use Attorney who filed the appeal. stated he wanted to thank Mike for his detailed analysis because it was Mike and Kevin that started the discussion. I want to thank Kevin for allowing me to meet with him last week to open this discussion about the rough proportionality test and so I'm going to rely on Mike for traffic analysis and have had a brief conversation with your City Attorney as well and the underlying question as cast by Councilor Wright here is that if all got one of this project and pre-development, funded it and directed it by its own warrants why are we here and that's really the doctrine of that work that I'm here to talk about tonight in industry and new to. You mentioned the same type of analysis in his briefing as well, but the constitutional conditions doctrine under the three cases that really set the stage for why we're here tonight. The 1987 decision by Nollan, which is the nexus test. That's where a developer or a land owner who makes some kind of an impact if you will, to public facilities and there must be a nexus between those impacts and the proposed exaction I guess, or then ask from the city or the county. Then Dolan came a few years later and answered all of these unanswered questions that the supreme court had left open when they decided Nolan and just came out and said, look, we can't have Nolan requiring a nexus. And then there being a totally broad and 100 percent discretionary call on the part of cities or counties. There has to be a rough proportionality between those impacts and our engineer has through the evidence and uncontroversial the evidence in the case presented to you that our impacts are three to five percent on the quarter. I'm hardly significant by any reasonable engineering standard. So Dolan isn't the end of the discussion. That is the supreme court decision in Dolan because the unanswered questions that came after Dolan and that Mr. Nudamas and his argument is why we have the application of Nolan and Dolan in situations where land owners or developers are asked to do something off site or to contribute to a transportation fund in the form of dollars or offsite improvements.

And so that's the case. And that's exactly what we have in tonight's type of scenario. And the City Attorney and I spoke briefly about the application of coats and the Supreme Court case

in these facts that we have presented before you tonight. It is a clear application of that decision which requires that Nolan be satisfied and honestly, I can point to some impacts, three to five percent. And so it's, clear in my view that Nolan and the requirement for nexus is met here, but Dolan clearly has not just so off the ends of the scale for requiring that our project be conditioned by this paragraph two, I guess if you will, written in a way that preconditions the approval to establish a new commercial building, at 25 Avenue 'N' North is with the understanding of the turn lane recommended the TIS and now you understand why we recommended you this because ODOT already required and are represented to us that we were doing so and we relied upon that or a right in, right out turn will be developed in accordance with within So that's a precondition under Koontz which controls this case. And that's why the rough proportionality test under Nolan also must be applied and we have some application of that, although it's an admission on the part of the city's staff and in looking at least at the bounds of that test. And we're looking at finding number 20, which reads a condition of approval that were required. The applicant developed a center turn lane on the highway as recommended, would likely fail the rough proportionality test by case law under Dolan. So in this case there was no individualized determination because it was so obvious on part the city transportation engineers involved in the case before I filed the appeal that the test was going to be failing anyway. And so that's the part of the argument that I wanted to make sure in this storytelling process between when Springport started down this road in 1987 and finished its analysis just a few years ago. By saying that intrudes, you have to look at preconditions as well as just exactions of or dedications of the property. Mr. Phillips further stated he would like to reserve just a moment of time if necessary after Mr. Anuta continues with his, comments, he's obviously going to support the notion that despite Koontz, the tests are still met or more importantly Mr. Anuta argues that Nollan and Dolan don't apply and, really that's contrary to the law and contrary to the facts of this case.

Mayor Barber stated, thank you and just to clarify and after public comment, the appellant will have an opportunity to rebut comments made.

Mr. Phillips stated thank you. I won't have to reserve that. Are there any questions for me or for maybe for Kevin that we should work out before the opponents to our appeal allowed to testify? Any questions for Mike or for my client?

Councilor Morrissey stated if the development was approved tonight what is the timeline of the project?

Mr. Phillips stated that's a great question and I'm not at liberty to answer that question.

Mr. Dover stated he was going to answer that question. Really as soon as possible. It would need to engineer the site for the drawings and the site improvements to Avenue 'N' in which we've already committed to and so it will take about eight weeks to put together drawings. We can submit however long the community takes to approve the drawings, let's say 90 days, and then it would take us about six months to open from there.

Mr. Phillips stated so I think the answer is we're ready to go and we're, you know, we've been obviously delayed through the appeal process, but we're in a position to and, both in position, but also ready to do so. When we get to the end of the discussion and the City Attorney and I did talk about this as we'll have to talk about a timing question based upon what you potentially might decide on, additional open record sessions, whether it be brief where we don't brief or whether additional comes in and we'll have that conversation. Thank you for your time.

Mayor Barber asked if there were other individuals who would like to speak in favor of the request, hearing none, Mayor Barber asked if there was anyone that wanted to speak in opposition to the public hearing.

Karl Anuta, Law Office of Karl G. Anuta - Portland, Oregon, stated hopefully you've had a chance to glance at least not very closely our comments and our supplemental comments. I'm not going to repeat what's in those. I'm going to try to just address some of the points that have come up tonight on the assumption that you'd read though this and if you have any questions, you'll stop me and say what about that? The fundamental problem is that the developer is asking you to have the city taxpayers and the State or the state taxpayers and I don't really care which, but somebody else shoulders the costs of their increased traffic, which everyone agrees will cause an increase in traffic. Mr. Phillips pointed to finding number 20. I thought that was kind of interesting because the next finding which said, based on the TIA, this is 21 based on the TIA, the proposed grocery outlet, will have a significant impact on the local highway and that should be addressed by improving the center turn lane and that does mean the nexus test. That's the finding that the Planning Commission made. So here's the problem that I see that you all face, your being told by the applicant's lawyer, we think that the turn lane that the Planning Commission required is going to be really expensive and we think he stated the thumbnail it at \$2,000,000.00. That's not data, that's a thumbnail guess. If you were going to try to make a decision on proportionality, you would want to know what the actual cost was. Second you're being told because that thumbnail number is so high, it's disproportionate and so, and this is the part where I get confused. It sounds like they're saying and so we shouldn't have to do anything to solve what the findings clearly conclude is a significant impact.

That doesn't make any sense. You're being asked to do all or nothing without being given any data on what would, what are the other options, what would they cost, what is the

commensurate value of the traffic or the arm of the increased congestion, particularly during the high season, what is the impact of that and what is that worth. Should you be saying, well, that's worth hundreds of thousands of dollars, or maybe it's worth a million dollars. Put that somewhere where it causes benefits because we know your project is causing detriments, but instead you're being told it's too much, just take it away. The planning commission carefully considered this. They'd put the condition on knowing that it would have repercussions, but that there had to be something that addresses the impact of the development. Mr. Anuta further stated the other points that I would make to you is just for the record, I would note that although the appeal notice in front of you says that they're appealing on due process grounds and LUBA issues, I presume you'll notice that both of those have been abandoned. The only thing that's in front of you is they're taking arguments so you don't have to decide on those other issues where we think if you did, you'd find that they were given ample process and that there's no conflict with LUBA laws. I would also note for you that ODOT was really clear. They recommended a left turn lane and they recommended it because it's needed and the planning commission agreed with that. There's no reason for you to have to disagree with the planning commission because everybody agrees it's needed. Maybe the solution here and it's not the solution that the developer wants and it's not the solution that some of the people in the community want, but maybe the proper solution is wait until there is some funding, get some funding from the developer combined those and then fix the road, but don't put in a development that's going to cause major problems, without addressing that issue. You have to do something to fix that issue. Otherwise, you're unfortunately in a position where your constituents are going to say, why is this traffic so bad? Where was our Council when this was approved? Why didn't they require something that would solve this problem and that's ultimately the unfortunate position or the fortunate one, depending upon your perspective that all elected officials are in. You have to make some decisions; you have to think about the long-term repercussions for the community. There would be positive benefits from having a grocery outlet but there would be negative detriments from having that kind of additional traffic increase and no resolution of the impacts and know you're allowing the developer to externalize those impacts onto the community. That's not appropriate either. There would also, I point out it was mentioned that grocery outlet would reduce some prices and that might help some local folks. It would help the local citizens; it would be the ones that are shopping here. It would not help any of the other local store owners who are going to see that competition take away their profit margins for many of their local stores because those grocery stores will not be able to compete with that. So there's a tradeoff here and there are benefits and detriments. And I think what's in front of you now is pretty straightforward. The applicant's appeal says do away with the condition that's not fair to the community, that's giving them an unfair advantage over other developments which did have to pay for their traffic impacts. That's the only alternative you've been given, and that's not appropriate. You should be saying, come up with some other options. You want to build a store in our community, mitigate the impacts that we know you're going to create, your own traffic analysis shows you're going to create some. Give us a way that you would mitigate those or sorry, we don't want more development. That just creates impacts for everybody else. We want development that has a commensurate benefit on all levels. I'm happy to answer any questions if that's helpful.

Mayor Barber asked Mr. Anuta if he had been retained by Protect Pacific Northwest.

Mr. Anuta stated that is a group of people up and down the coast, both in Oregon and Washington that get involved in land use matters and are worried about sprawl or development that is going to create increased traffic or increased impacts. Sometimes it's parked issues. It's a variety of different issues. There are members up and down the Oregon Coast and the Washington Coast.

Mayor Barber asked about people here in Seaside.

Mr. Anuta stated there are some members in this area.

Councilor Wright asked if this is the first issue, did you get involved with.

Mr. Anuta stated this is the first one that I'm aware of that certainly the first one I've been hired on this here. I've done some other work in Tillamook and other communities up and down the coast in both Oregon and Washington, but it's the first one in Seaside.

Mayor Barber stated at this point are there any other persons that would like to speak in opposition to the appellants case.

Jeff Hazen, Executive Director of Sunset Empire Transportation District, stated he was here on behalf of the board of commissioners and we're not actually opposed to development. The board submitted a letter to the Planning Commission identifying that they're supportive of economic development, but they're very concerned about the impact on Highway 101. As you know, we run through Seaside with a couple of our routes. Route 20 out of Cannon Beach and Route 101 which hooks up with the Cannon Beach Route and we struggle year-round with keeping our buses on time, even during the off seasons, but especially during the summer months, it is absolutely impossible to keep a bus on time.

We oftentimes will cancel a loop because we're over an hour behind on that loop because of traffic coming through this corridor. We just wanted to make sure that you were aware of our concerns and hope they'll take that into consideration.

Mayor Barber asked if there was anyone else present that would like to speak in opposition of the appellant case and no one else spoke in opposition of the appeal. Mayor Barber asked the appellant if they wanted the opportunity to rebuttal.

Mr. Dover stated thank you for the opportunity and he would be brief in his comments and Mr. Phillips will have a couple as well. I don't think at any point we've said we're not willing to work with the community on financial impact. We're just asking for a proportionate impact. Our overall project cost by ODOT is deemed to be \$10,000,000.00, and our project is roughly half. In order to meet standards, we would have to build 50 percent of their project for them and that puts the costs at around five million. Yes, we did put one point nine million to two point nine million in our statement to the council. We were very conservative with that number and is probably much higher. We're not looking to get out of anything. We're just looking for some kind of proportional middle ground to work with the community. Mr. Dove further stated another comment was stated about other developments having to pay for their impacts. We've filed a freedom of information request act. We've not heard anything from the community yet, but I'm not exactly sure what the apartments that were built two years ago next door, what they had to do to mitigate traffic at the same intersection. But we would, we would sure like to know that information. We filed the appropriate paperwork to receive the information probably about 30 days ago and we still have not received it. So hopefully after this hearing will be able to get our hands on that. This property was zoned for commercial and retail use isn't allowed to be used at this location and so we're proposing a project that fits in with the development that the community and the zoning commission, again, as approved of this project, they've just put a disproportionate condition on it that is far greater than the value of the project itself.

Mr. Phillips stated he just wanted to make a couple comments about the information that the opposing counsel said he pointed out that I had said I made a thumb in the air estimate and that is how I made my initial estimate. The second estimate that I made was by going to ODOT detailed plans and requirements for left turn lanes. They spell out a minimum storage length of 100 feet. They spell out based on the design speed for the highway value called S, which is the reversing curve, sort of S shape that's necessary to develop a left turn pocket. They also specify taper rates based on the speed of vehicles and based on all of that information, I calculated out that for the likely design speed of the roadway, which I can't say with certainty what they would use. They typically use either five miles per hour or ten miles per hour above the posted speed because they want the facility to be safe even if someone's driving a little bit faster, but that puts us in the length range of 157 to 1,282 feet overall of improvement from the north side of Holladay where our improvement would start until the end of the taper at the north end of the project. Just for purposes of comparison, the entire length of the improvement project, if they were to do the whole thing is 2,530 feet. So that range is between 42 percent and 51 percent of the overall ODOT project length that we would be required to do as a fix. It's extremely generous to think that it would only be in the one point nine million to two point nine million dollar range to do our improvements based on that scale of the overall \$10,000,000 improvement. While it is not an exact engineered estimate. It would be extremely expensive to provide the engineer design plans that would get us to a true construction budget and we know with certainty what the conclusion would be without having to go to that level of effort as far as it shouldn't have to do anything. We run into a bit of a problem here in that ODOT does not allow us to design a turn lane that does not meet their standards. We can't go out there and say we're going to whiten it by four feet because we think we can come up with the funding for that and we'll make the lane a little bit wider and people can kind of go around in the bike lane and sneak by. Somehow ODOT does not allow that to happen and have significant concerns about doing a half improvement and their requirement is if must meet the standards of the highway design manual or you don't get to build it, so we don't really have a good middle ground that says we're going to provide an improvement for this turn lane in lieu of the thing that's going to satisfy ODOT and that will allow us to build. That isn't the budget that we're talking about being constrained and not being able to do that. We really can't consider that turn lane. As far as whether there's an unfair advantage. I think Kevin could probably speak to that but the vast majority of projects that you approve in this community are done without a requirement for improvement on the highway and I'm not specifically aware of any that have had a requirement that would be similar to this and I'm putting words in Kevin's mouth at the moment, but I'm not sure that he's aware of any that have had a similar requirement either. It is not that we're trying to get someone else to pay for a problem that we're causing. It's just a recognition that this is beyond the scale of our development. I think that there is a willingness to try to contribute to a positive thing to the community. We believe that the facility itself will be positive for the community. We don't necessarily need to end the conversation there, but it needs to be something that's proportionate to the skills of this development that we're getting an unfair advantage. In fact if you look at the history of decisions here, I think quite to the contrary, we've been unfairly penalize with a condition that we can neither fund or we're going to count on happening prior to the completion of this project. Mr. Phillips further stated that Mr. Anuta did bring up the question of standing and although I'm not aware of any of the members of his group present this evening or a landowner in the area, and he would kind of let that speak for itself related to the standing of his group to participate this evening. Mr. Anuta and I do disagree on a lot of points of potentially some facts where we do agree on one thing and that is proportionality.

The numbers were three and five percent potential impacts and are not significant and we actually don't really have too much trouble with contributing in the form of improvements to the transportation system in your City. Proportionate to those at scale impacts three to five percent. And to that end, Kevin and Mike and I met last week and tried to start that discussion. It was my job and I do this as a land use practitioners and will reach out to the city and say, we're way off, the ends of the scale here. Let's try to find something that works for us. So to the extent there's a condition that isn't proportional, we certainly will agree to it, so we're not here to get a free lunch, we have some impacts, minimal as they might be. We certainly want to mitigate for those impacts and most importantly, the warrant that ODOT uses was not tripped by us. It was already created development. The idea is through this entire stretch of highway was designed and funded before our application was submitted and we want to participate in that process to facilitate, but we certainly can't participate to the level that has been asked of us. With that, thank you again, Mr. Mayor and Council. Mr. Phillips further stated he did not want to put Kevin on the spot but is there a condition of approval that we can build and work out. Maybe I'm asking questions that the Council might be asking of staff or potentially even the City and see what's on the table.

Mayor Barber stated he preferred Mr. Phillips address the council and he wanted to hear from our City Attorney and those and then we will decide your next steps. Mayor Barber further stated at this time he would close the public hearing, would that be appropriate?

Mr. Van Thiel stated no to the Mayor and for him to look at the script, the hearing is to be left open for a period of seven days to get people an opportunity to respond further. Council won't really be able to do anything with this until basically your next meeting February 11, 2019, whatever day that is.

Mayor Barber stated that's correct thank you for that. Mayor Barber further stated he would like to hear from you. I don't think there are any attorneys sitting here behind this desk and we've heard some various attorneys tonight. I'd like to hear your reactions and any advice you would have to the Council at this point.

Councilor Morrissey stated he actually would like to add something to that. Could we get maybe a range of possible options that we have as a Council and the legality of each, would that be appropriate.

Mr. Van Thiel stated let me help you a little bit here. I'm not going to provide you with an opinion on what I think about the objections or anything like that. I see in the paperwork and I looked at it and looked at it more than once. Both of these people Mr. Anuta and Mr. Phillips on behalf of their respective clients have asked among other things that the matter be remanded to the Planning Commission. I respect the Planning Commission of the city. It makes a lot of difficult decisions and, whenever possible we need to give them the respect and the consideration to look at all of the issues and then make a decision on this case. The only troublesome thing about that proposal in remanding is that land use decisions have to be solved basically within 180 days. Mr. Van Thiel does not know the timeline, and wasn't involved in any portion of this case as it moves through the City from an application to final application to the Planning Commission here, whatever happens, I don't know, but I do know that we've got to have some closure to this thing within that timeline. And so if we don't, we've created some problems. Mr. Van Thiel further stated he is going to have to defer to Kevin as he did not know the timeline and maybe Council has some thoughts on that, I don't know.

Mr. Cupples stated he believed he was looking through the file earlier and I believe an application fee was paid on September fourth. There might be an argument and saying that, well, there their application wasn't really complete until they finished their transportation impact analysis. That would be something that if the applicant was willing to say we're willing to basically waive that 180 day period and allow the Planning Commission to go back through that. That is certainly something that they could make an offer. But, otherwise when you remit it to the Planning Commission and by the time we do our notifications and everything. I'm concerned that even if it was the October time period by the time you get through a Planning Commission meeting and a possible continuance and then get back with a potential appeal again, you may be running out of time.

Mayor Barber stated to avoid the time frame that we're talking about, we would need to get agreement from the appellant, is that what you're saying.

Mr. Cupples stated if the appellant was willing to waive that time period, or at least you know, say it's going to start or be completed within a period of time, that's something that they could do.

Councilor Montero asked Mr. Van Thiel if that can be done.

Mr. Van Thiel stated it can be.

Mayor Barber asked if there were any other comments from Mr. Van Thiel.

Mr. Van Thiel stated you'll notice in the appeal under number two to remand the decision to the Planning Commission to permit an appellant to adequately respond through testimony and documentary evidence to the commission.

I am just suggesting that why not give the Planning Commission at Opportunity. I think the other side and Mr. Anuta has also asked for the same as I remember. Councilor Montero stated Mr. Van Thiel mentioned the seven day extension or can't remember what word you used. If we wanted to remand it to the Planning Commission, do we still have to wait seven days to do that?

Mr. Van Thiel stated he would refer this to Kevin as he is right on top of this stuff.

Mr. Cupples stated and you may even want to talk to either of the legal counsel as I would understand it because they're saying they would like to leave the record open. You could leave the record open for seven additional days. If it goes back before the Planning Commission, you're going to be back and forth for a hearing and make an offer for more comments and I don't know why that would create a problem because you basically be in and they can load the record with whatever they wanted to.

Mr. Van Thiel stated he would just like to flush it all out. It's kind of my attitude and approach of this.

Councilor Morrissey stated so one of our options is to send it back to Planning Commission.

Mr. Van Thiel stated that's great.

Councilor Morrissey stated the other option is to deny the appeal or to approve.

Mayor Barber stated at this point, the Council was ready to talk about their perception and where they feel they are going after you heard all of the testimony this evening.

Councilor Horning stated he thinks it should be remanded to the Planning Commission. I feel that the proportionality questions should be resolved through some negotiation of what that proportionality value is. As long as we can advance this without undue impacts on traffic, I would be in favor of it. Councilor Horning was concerned though quite a bit about increasing the traffic congestion, that intersection.

Councilor Phillips stated personally she obviously wants the grocery outlet to come into this community and is greatly needed. Whatever goal has always been traffic congestion and whatever else, and she was hoping that we can come up with that wonderful balance of being able to move this forward as fast as possible to get it open and also has some what the traffic concern. So I don't see how we as a Council can do that without it having to go back to the Planning Commission to do their due diligence. And hats off to you guys because you've put a lot of work and effort into this. But I really think that that's where it needs to go back.

Councilor Wright stated in addition to everything else already said. I still have concerns that ODOT specifically said twice in their letter that this project should be conditioned on having the turn lane there and I would like to make sure that ODOT comes and testifies before the Planning Commission. So we remand that back to them and remove that condition before we move forward. Councilor Wright further stated he agreed traffic is going to be bad. Traffic's already bad, this will make it somewhat worse. Having conditions on how you get in and out of the property obviously that's something that is a good idea, but I think it's been shown that people are going to find a way around it. Councilor Wright further stated as residents we know how to get around things already, and it's one of the first things you learn when you move here. So my biggest concern is, not necessarily traffic for the residence but with traffic for our visitors and at some point they will decide to go somewhere where the traffic is not as bad and that is a big concern.

Councilor Morrissey stated he agreed with what's been said by everybody. I think for grocery outlet would be a great asset to the community and I want to see that happen, but we definitely need to address the traffic issues. I think sending it back to the Planning Commission and then try to find a solution which I think we will find is the best option.

Councilor Montero stated she has wanted a grocery outlet in Seaside for many years. I even wrote to them some years ago and said when are you going to be in the Seaside? So obviously I really do believe that they are a benefit to our community in many ways. I'm also concerned about the traffic. I'm disturbed to see that sentence from ODOT that assures that there will be funding for this portion even if they lose funding and it is simply in all my years in Seaside one more example of ODOT not doing what they say they will do. I would also welcome ODOT coming and testifying. I think we can certainly try to put pressure on ODOT to pay their fair share of this. I think the point of what is the fair share and the point that you brought up, what did the traffic increase to for the apartments, and what did that have to pay for their fair share? So I think all of those are things that do need to be looked at and I think the best place to look at it, sorry, is to remand it to the Planning Commission. We've got a lot of good people on the Planning Commission and I think they think outside the box. I think they work hard and I think that's the best place to put this.

Council President Frank stated he agreed with all of the above and it is very unfortunate that ODOT created this issue and as I would agree that they really need to be involved through the Planning Commission. We can't decide anything tonight.

Mayor Barber stated he was in agreement in general with all the comments that have been made but I think speaking for the whole Council, it is with real reticence that this Council ever does not follow the recommendations of the Planning Commission. These are reasonable minds that have worked hard to bring forward their very best thinking on these issues and so a decision of this Council tonight to remand this is not a statement that we do not have confidence in our Planning Commission. That is a statement that says this is a difficult issue, we ask you to go back and work on it a little more to see if you can come along with the appellant and with the others that we can all work together to come to a solution. We're all very concerned about the traffic issue here. I think we want tourists to continue to come to our community. That is the engine that runs this community, but we also are concerned about the people, those of us who live here as well, and our quality of life. So it is a difficult issue and I hope that we will hang on there for a little longer and see if we can come up with a bigger solution to this. So with that, I'm willing to see if there's anyone on the Council that was prepared to make a motion and in spite of the motion and the action that we take, we will leave this open for the foreseeable future, another seven days.

Councilor Wright moved to remand the case back to the Planning Commission and direct them to take additional testimony.

Mr. Van Thiels stated that can't be done at this point, and that will have to be done in a subsequent meeting because we're going to keep the hearing open for seven days for additional written documentation or things to come in. And so unfortunately I don't like the timelines any better than anybody else. They're really at this point if everybody's in agreement, there shouldn't be emotion to continue this.

Councilor Montero stated so again, clarify for me because I thought I heard something else. If we want to remand, we still have to keep it open seven days for written testimony to us, are we required to do there.

Mr. Van Thiel stated that is normally what is done.

Mr. Cupples stated this gets into legal levels that you're Planning Director isn't well enough versed in land use law to even be able to answer that. You may be able to call on the applicant's attorney to actually clarify that. I know there was a request to leave the record open for seven days that you would automatically grant.

Mr. Van Thiel stated you would grant that automatically if somebody moved to do that and that what he thought had been done.

Mr. Cupples stated if in fact you're willing to kick this back to the Planning Commission, I think you can go ahead and leave the record open, but as I said before, I don't know what the differences were leaving the record open because you're going to be hearing them. You're going to have the whole file back open at the Planning Commission.

Councilor Montero stated it is not like we are going to reconsider it in seven days. If the record is open for input the that input is going to go to the Planning Commission

Mr. Van Thiel stated the purpose of keeping the hearing open and it has been my experience and I refer to these guys like they do a lot of this stuff and I don't because I have a lot of other things on my plate. The purpose is to give people an additional opportunity who were not here necessarily or that provide additional information. If they want to provide additional information in written form, I just think the Planning Commission should have the benefit of that before it comes back to them. There may not be any.

Councilor Montero stated especially since both sides are asking for it to be remanded.

Mayor Barber stated he was going to ask Mr. Phillips to help Council, which would mean that Mr. Anuta would get an opportunity to speak also.

Mr. Phillips stated the point of clarification that I think needs to be heard on the floor. Is it yes my request to keep the record open to respond to Mr. Anuta's arguments and evidence was the intent of that was to keep the record open if you were going to make a decision thereafter, closing the record. In the alternative, you certainly have the power as an alternative relating to our appeal to remand the matter with directions. May I suggest that if you do remand the matter to the Planning Commission in the alternative of keeping the record open here and making your own decision that you do so with instructions to the Planning Commission to determine a proportionate condition of approval relating to the traffic impacts? That's my suggestion and to the extent you were asking me to waive my request to keep the record open seven days in order to facilitate a remand to the Planning Commission, I would go ahead and retract that request.

Mr. Van Thiel asked if there is a problem with the 180 days, he had not looked at the calendar.

Mr. Phillips stated we do have some housekeeping items and in my experience, the 180 days statutory requirement runs from the date of fully completion. Fully complete determination by the city, not on the date that we filed the application or when we submitted the check for the application.

So normally there is a letter or a determination encountered complete or fully complete determination that 180 day requirement runs from that date and I think Mr. Anuta would agree and I'll let him address that, but again, to the extent you wish to remand it and, and with instructions to the Planning Commission to determine a proportional condition of approval, limiting the record, what I'm suggesting is that you don't leave the record open for any and all potential challenges you see, we're talking about a specific fact and a specific set of regulations that apply to that and I would suggest that to the Council, to your attorney, but more importantly, we don't want to be run up against that 180 day determination. And if your staff determines that we are close to that day, I have also spoke to my client who's going to agree tonight to an additional extension of 45 days from tonight to the extent that it needs to be facilitated to this decision.

Mayor Barber stated should we have that on the record.

Mr. Van Thiel stated it was on the record.

Mr. Dover stated they would agree to a 45 day extension.

Mr. Van Thiel stated maybe Mr. Anuta has something to say.

Mr. Anuta stated a couple of comments for you that last part was I believe the key focus because if you run up against that statutory deadline and it's not been extended by the applicant or waived, the decision is automatically approved and you don't want to be in that situation because it doesn't come with all the conditions. As to the seven days, and I would also urge you to direct your staff that they calculate out when does that timeline run, how does that fit with the 45 days and if it's going to look like it's going to take more than 45 days to get the Planning Commission re-hearing done, you're going to want to have the applicant give you an additional extension. Otherwise you're in that same boat. As to the seven days of leaving the record open, we also requested that and as I read your City Code Rules, if anybody requests that and doesn't retract or waive it, you are required to do that. Since Mr. Phillips has agreed to retract his request for reopening. We will also do so and present our additional information at the Planning Commission level, so I think since no one else has asked that it be kept open, you would be in a position then potentially to make a decision tonight to remand. The final point that I would make is the last one that Mr. Phillips brought up and on that point we disagree. I think you are to remand to the Planning Commission to look at any issues that they think is appropriate. You should not limit it to just the proportionality issue because in trying to craft a remedy for the proportionality traffic impact issues, the Planning Commission may need to look at other criteria of approval and adjust those in some way and you don't want them hamstrung by saying. The only thing you can look at is this one traffic issue. When there might be other portions of the code that are implicated by whatever solutions are created. And then as you pointed out the commissioners, you have some very bright people on that commission. They can work hard on those issues and it may be that they don't need to go beyond the traffic issue, but I've seen instances where there was a remand with issues very limited and then the underlying commission was stuck saying we can't fix it with that limitation and we can't, we were told that's the only way we can look at it so we can come up with a creative out of the box solution. So I would urge you to remand on all issues and open it up for the Planning Commission to see what they need to do to come up with a creative solution.

Mayor Barber stated Council needed some guidance please.

Mr. Phillips stated I think that is the only issue that Mr. Anuta and I disagree on. I appealed the unconstitutional conditions and that's what's before you tonight. So you can't, in my experience remand with a broad all-inclusive type of remand. You must or you should remand for a direction from the Planning Commission to address that particular issue that we raised in ours. And, although it isn't a very fine box that the issue of rough proportionality on the transportation issue, it certainly couldn't go into any of the other unrelated conditions that we didn't have any concern with.

Mayor Barber asked Mr. Van Thiel if it would it be possible on the basis of what you heard for us to waive the seven days.

Mr. Van Thiel stated Council could remand it if you want to because they both asked for seven days, but sometimes these lawyers will have additional comments that they want to make. That's why they asked for it.

Councilor Montero stated but they just took it away.

Mr. Van Thiel stated neither one of you wants to seven days?

Mr. Phillips stated that is correct.

Mr. Anuta stated that is correct. We're willing to waive the seven days.

Mr. Dover stated just on the conditions, Mr. Anuta is coming to the party a little late here. And our concern is the developer, if you open this up for every condition to be looked at; it's giving him an opportunity to rebut anything when going back to the Planning Commission.

We just respectfully ask that it be laser focused on the proportionality of the impact that we're creating.

Mayor Barber asked Councilor Wright if there was a motion on the floor.

Councilor Montero stated there was not a second on the motion before.

Mr. Winstanley stated there was not a motion on the floor.

Councilor Wright moved to remand this case back to the Planning Commission and direct them to determine proportionate condition of approval regarding the traffic control with a second from Councilor Phillips; carried unanimously. (Wright/Phillips)

Mayor Barber thanked the applicants and the audience for patient pain staking process which was very important. There are several Planning Commission members here and again thank you for your diligent work.

Councilor Wright moved to remand this case back to the Planning Commission and direct them to determine proportionate condition of approval regarding the traffic control with a second from Councilor Phillips; carried unanimously. (Wright/Phillips)

Mayor Barber thanked the applicants and the audience for being patient. This is a pain staking process which was very important. There are several Planning Commission members here and again thank you for your diligent work.

**PRESENTATION –
NORTH COAST TRAIL
ALLIANCE**

Mayor Barber stated there would now be a presentation from the North Coast Trail Alliance (NCTA), Klootch Creek Mountain Bike System from Steven Blakesley.

Steven Blakesley, 31928 Oceanview Ln., Arch Cape, stated he was the president of the North Coast Trail Alliance for improving mountain biking opportunities on the north coast for residents and visitors for generations to come. Mr. Blakesley introduced Chris Quackenbush who was the Vice President for the North Coast Trail Alliance, and David Dougherty from Greenwood Resources. Mr. Blakesley stated don't worry, I'm not asking you for your money tonight but at some point I would like to have a letter of recommendation because we will need that to get our grant applications that will help with funding. The idea here is that this is a really good place on all levels to put policy work to put financial assistance and just help keep things going. The PowerPoint Presentation presented to the City Council can be viewed (hard copy) at Seaside City Hall with the City Council packet dated January 28, 2019. The North Coast Trail Alliance website has more information regarding the information presented and can be found at: <http://northcoasttrailalliance.com>.

Mayor Barber asked if there were any questions.

Councilor Horning stated about 15 years ago, the national park service coordinated a national heritage area development plan between the north side and the south side of the Columbia River and up to about Cathlamet to define this as a natural heritage area. It fell apart for political reasons in Washington but was in Oregon, but everybody from Oregon all had big trails through the woods up above the city. So if you wanted, you can hike around the city and never have to go across the traffic of Highway 101. I'm wondering, are your bike trails also useful for people who are hiking or is this designed to be acrobatic bicycle stuff you see on the Oregon Field Guide.

Mr. Blakesley stated possibly for some. I'm going to go back to this. So if you look at this (picture of trail system) the green will be mountain bike specific because that's for safety. Eventually we're going to have a designated route that goes up and it doesn't conflict with people coming down, but this whole site out at Klootch Creek is probably going to be primarily a mountain bike specific. We do foresee some of these routes out here being used by hikers and trail runners. The county park is going to put in an additional about half mile the parallels with the Necanicum. That will probably be more as well. In addition to the 40 plus miles, we're utilizing the logging roads that are up there. So what it does is it helps introduce the whole area and there are safe corridors that you won't be mixing fast Mountain bikers with walkers, but it opens up that whole corridor. It makes it more populated and therefore safer.

Councilor Montero asked if he had any conversations with the North Coast Tourist Studio.

Mr. Blakesley stated yes.

Councilor Montero stated because one of the work groups has to do with outdoor recreation and over the last few months we've been doing a lot of talking about bike trails mountain bike trails, and hiking trails. And if you're not in that mix, I would really recommend it and would like to help with that if necessary.

Mr. Blakesley stated he was at the meeting in Cannon Beach, but since there's more meetings that you're referring to that I am not a part of and I guess I am not in that mix.

Councilor Montero stated we're at the work group stage and we have had six months' worth of meetings and I'd like to get you to the right work.

Mr. Blakesley stated that would be great.

Mayor Barber asked if there were any other questions or comments.

Council President Frank stated I think it's a great opportunity for the community and tourism and our town and enhances all the natural recreation aspects. The trails we talk about in the town and then actually having something that would connect this far up as Klootchey Creek is a great draw and a complement to our local community as well.

Councilor Morrisey stated great job.

Mayor Barber stated keep the Council informed.

Mr. Blakesley stated he will come back but not like following a land use planning thing.

Council President Frank stated the Council would be happy to write a letter whenever you need it.

**BID RESULTS –
DOWNTOWN MAINT.
DISTRICT LITTER
CONTRACT**

Mayor Barber stated next on the agenda is Dale McDowell with the bid results on the Downtown Maintenance District Litter contract.

Dale McDowell, Public Works Director, stated there were two bids for the downtown litter project and one of the things I wanted to clarify, because I did receive a telephone call from one of the bidders is the licensing that is required, so naturally I called the State and because this is not a janitorial job, it's strictly litter pickup and does not require a janitorial license. It does require a license with the Department of Revenue to make sure that they're getting their taxes. They're also under CCB rules and they've also been notified which they were last year and they conducted an interview with Mr. Johnston who had the contract and who again is the low bidder this year. Mr. McDowell further stated the City of Seaside advertised for bids for the Downtown Maintenance District Litter Removal. There were two bids submitted on January 15, 2019 and received from Kris Johnston in the amount of \$30,302.00 and A-Affordable Carpet – Jay Paul in the amount of \$38,000.00. Kris Johnston currently carries the contract for the litter removal. Mr. McDowell further stated staff recommends accepting the bid from Kris Johnston in the amount of \$30,302.00.

Councilor Montero stated when you were talking about licenses, you talked about the license for janitorial services, but then you said something after that.

Mr. McDowell stated the CCB is a construction contract.

Councilor Montero stated there was something in between there.

Mr. McDowell stated then you have the Department of Revenue. Basically they have to register their name it is just a license and anyone even Bob Perkel could bid on this contract by having the license. The contract is for only picking up litter and you are not entering a building. You are not washing windows, or cleaning floors, not moving furniture, and shampooing rugs. The contractor is picking up trash and you're putting the trash in our garbage cans, and you're not removing anything. You're using no equipment except pickers and maybe rubber gloves.

Councilor Montero asked what the name of Kris business?

Mr. McDowell stated he believed it's was just Kris Johnston.

Councilor Montero stated she looked that up and cannot find a business license for him.

Kim Jordan, City Recorder, stated he has one. If they have a contract with us they have a business license that's required in the City.

Councilor Montero stated but I looked him up in the State for the business.

Mr. McDowell stated he was not required to have a CCB.

Councilor Montero stated any business person in this state who runs a business. We all have to have business licenses with the Secretary of State and I couldn't find one. Somebody else might need to look it up because I couldn't find it.

Mr. McDowell stated he can call him tomorrow just to verify it and have him send something to us.

Mayor Barber asked if there were any other questions. Mayor Barber stated he would entertain a motion.

Councilor Morrisey moved to award the Downtown Maintenance District Litter Removal contract to Kris Johnston with a second from Council President Frank; carried with Montero opposed. (Morrisey/Frank)

**VACANCY –
COMMUNITY CENTER
COMMISSION**

Mayor Barber stated there was one vacancy on the Community Center Commission with the passing of Greta Passetti. Mayor Barber stated Council would be accepting applications.

**CITY COUNCIL GOALS
2019-2020**

Mayor Barber stated the City Council goals which you all have copies. Here are your goals for your goals. This was productive process a couple of Fridays ago. We met at the conference room at Ticor Title and the Corragio Group, a consulting firm from Portland facilitated our day together and these are our goals in these five categories, our Economic Base, our Infrastructure, our Operational Excellence, our Resiliency, and our Quality of Life. And in each case there are three or four goals and each one of the goals is assigned to the City Council or the Mayor and then our City Manager paired us up with one of the staff who have special expertise or interest in the area that we're talking about and I think this will provide for accountability and progress toward accomplishing these two year goals. They are significant and if any of you would like a copy of these goals they are available and Kim can make them available to you.

Councilor Montero asked if we can make sure that it is on the website.

Mayor Barber stated great idea on the website.

Councilor Montero stated it was her understanding that each one of us is responsible for one of the goals is going to make periodic reports to the rest of the Council.

Mayor Barber stated it would be a quarterly report for all the goals. Mark and I talked about that so that a quarterly basis, each of the Council or Mayor report the progress that you're making with your counterpart. I think we'll see some good partners just for an example under our Economic Base, still at the very top of that is the enabling of workforce housing and a plan for implementation by the end of December 2020 and then under our Infrastructure really dealing with the school district, all of the infrastructure that we're working on and have that completed so that they're ready to open in 2020. So it's pretty detailed and it really sets forth the work that we as a Council feel is really important. We heard from the department heads a lot of their work is woven into the goals and that will show up at budget time when we're looking at budgets, addressing each of those departments. So that's a general overview of the goals.

Council President Frank stated he thought the entire Council felt the process very productive and worked pretty well together. We're sort of teamed up on these projects and it's nice to have the City Staff involved with what we're doing in helping us and sort of guiding us along. So I thought it was very productive.

Mayor Barber stated Councilor Phillips and I have a very simple one to revise and update City Ordinances and Dave Ham will work with us on that. Mayor Barber asked how many ordinances they would work on.

Mr. Winstanley stated we tried to limit you to six or seven.

Councilor Phillips stated I thought we were zeroing in on six.

Councilor Wright stated one of the things that he was interested in developing plans to increase citizen involvement and the city government. So this would be ideal thing if you see something on this list that you would like to get involved with, please see that City Councilor you note there and you'll help me get mine done.

Councilor Montero stated she would really like to see something in the local paper and on Facebook to bring to the attention of people. Do we as a Council want to officially adopt these through a motion?

Mayor Barber stated yes we do. Would you like to make that motion?

Councilor Horning stated he would like to make a request with regard to our quality of life. The second item Engage Partners to Begin Implementation of Source Water Protection Plan. I believe that was meant to be Begin Refined Implementation. The Watershed Council had some recommendations that didn't get incorporated into the report that we approved. We talked about that and I think that language somehow got dropped behind engaged partners to be refined then that implementation.

Mayor Barber stated he would entertain that motion.

Councilor Montero moved that we adopt the goals for the City of Seaside City Council for the next two and four years with a second from Council President Frank; carried unanimously. (Montero/Frank)

**DISCUSSION – CITY
COUNCIL MEETING
FEBRUARY 25, 2019**

Mayor Barber stated Council has a meeting February 25, 2019, and the Mayor and Council President will be absent, so we need to have action tonight to appoint someone to preside at that meeting. Mayor Barber further stated he does not get to make motions very often.

Mayor Barber moved to appoint Tita to preside at that meeting with a second from Councilor Morrisey; carried unanimously. (Barber/Morrisey)

**UPDATE – SEASIDE
CIVIC AND CONVENTION
CENTER EXPANSION/
RENOVATION**

Russ Vandenberg, Convention Center & Visitors Bureau General Manager, presented Council with picture of the Expansion/Renovation of the Convention Center. Mr. Vandenberg stated I'll keep this as brief as possible. I put together a short presentation because I know pictures are worth a thousand words and you'd probably rather see some of the progress. We're making a visual presentation. I do want to just update real quick, we are a eight months ago, we started a 14 month renovation expansion project on the convention center at \$15 million dollars and we are on schedule and more importantly within budget. So I want to show you some slides and then I'm going to offer you an opportunity to give me some advice on a question that's been coming up recently. And that has to do with the exterior of the facility. So what you're looking at is the Necanicum Room and you can see they're beginning the work on the ceiling and dry wall is starting to go in. The HVAC system is in place, the electrical is in place, the AV is being worked on. The floor has electrical boxes that had been installed. So all the power will come up through the floor versus coming down from the ceiling. A much cleaner look. This photo is the other side of the Necanicum. This is the River Side Room and that is again, just the newer section that was built and they are just a little bit behind schedule from the Necanicum but both of these areas are scheduled to be an open on March 8, 2019 for the public. Another view of the Riverside Room, looking at the other side of it, you can see the dry wall has not been started in the ceilings, although they fully anticipate to have that completed on schedule. Just another view of the Riverside. This is a brand new room that we call the Sunrise Room and that's on the south east corner of the building. And we think that's going to be an amazing area for clients. It's going to have incredible views of the Necanicum and the City. This room is looking west and is a new room that's going up. It's going to be called the Sunset Room and it's a little bit smaller in size. It's more likely going to become a promoter boardroom. This is the exterior of the northwest corner and I had this put in the slides to offer an opportunity that we're looking at currently when we put the project together. We tried to keep this within our \$15,000,000 budget and we've done a really good job and so much that we started with the \$722,000 contingency. And after all the project change orders that I brought you, you, we still have about 500,000 left in our contingency and we don't see anything in the future that's going to reduce that significantly. We feel that we're going to, even after the anticipated work orders that we can, we can foresee, we still feel that we're going to have a little over \$400,000. One of the goals of the exterior was to cohesively design the building to look as if it was one building and under construction or as a completion is done, we wanted the building to conform as a visual that it looked like it was one expansion, one building. If you noticed over the years, we've had two expansions in the last 40 years and they're very visually recognizable. You can see the difference in this exterior aesthetics, the construction type of bill that was done and it looked a little hodgepodge if you will. So what are the goals? What we wanted to do is conform and make it a consistent look and when we decided on the scope of the project, we agreed that this part of the building look back side instead of installing metal exterior and that was a cost savings measure. We always knew that we could go back as the project progressed and do an edit. So that's where we are now. We're trying to determine whether or not the values there to spend the money that it's going to cost to remove the exterior and put the metal all the way around and I have a few more photos will help illustrate that. This is another area of the building that we agreed to just paint instead of installing the metal. So this area would be painted a very dark charcoal to pick up some of the design. This is an example of the metal siding has been placed on the east side trying to get a close up of that and this is a photo taken this afternoon showing the area that again would be painted versus the metal side and even on the west side, we're putting metal on the west side of the facility to cover up all of that aggregate concrete that we've had in the past. Another view showing the area that are the center that would not have metal. Again, it would just be painted a little bit different views from. From there, as you see that all the expanded area is they've started to put the metal up there and this is all going to be glazing up the top area as well as though the bottom get another view of the how the metal is starting to be installed. So what I would like to ask the Council to give me a little bit of a direction, the estimate that I've been given to remove all of this exterior, we put the metal all the way around is around \$180,000 that we've come out of an estimated contingency of roughly \$400,000 still leaving us a buffer to absorb additional costs that may or may not incur as we move forward. We have about four, about five and half, six months left in the project. So if the Council gives me direction that you see the value in it, you know, extending all the way around, I'd be happy to take that back to my commission and get their input as well as the expansion committee that's been put together. I think that's where I'm looking for your input here, is do you see the value in moving forward? Potentially spending an \$180,000.

Council President Frank asked if there were some conceptual pictures of what that looks like.

Mr. Vandenberg stated we did not have conceptual photos of that.

Councilor Phillips stated she was in favor giving the input because of the fact that I'm thinking about the wear and tear because of the salt air and whatever I would think that you would have to paint that often.

Councilor Montero asked what the comparison of the upkeep for the metal versus areas that are currently painted.

Mr. Vandenberg stated we have painted the building twice since I've been there. So it averages about every five to seven years.

Councilor Montero asked what the upkeep was on the metal, do you have to do anything.

Mr. Vandenberg stated not at all. I mean pressure wash at the most if we have the need for that, but there's no maintenance other than, you know, some form of an unknown substance. But we always have to be aware of the Seagulls and things like that. But that would be simply washing that from a practical perspective.

Councilor Montero stated then it seems to make sense. That is a practical perspective and there is the appearance perspective.

Mr. Vandenberg stated he would agree with that from a continuity and there would be a visual difference from the paint to the metal, but again, it's a very substantial add addition that we'd be doing.

Councilor Phillips stated but you have the money.

Mr. Vandenberg stated we do have a contingency to cover that.

Councilor Phillips stated it makes sense in the long term to utilize that money.

Councilor Horning asked what you would project the cost of painting for the area not covered by metal.

Mr. Vandenberg stated it would be under \$10,000 every five to seven years.

Councilor Wright stated his two cents on design, it doesn't hardly count for that. I kind of liked the contrast between painting and the metal and just having a little difference there and not having exactly the same texture all the way and I don't mind saving \$180,000.

Councilor Morrissey asked if there was a confirmed bid received.

Mr. Vandenberg stated not a firm bid. It's an estimate that was given to us by the contractor but it has not been put out for public bid.

Mayor Barber stated his prospective aesthetically and for durability. I think it's a good move and again, these are the times that you're going to do this sort of thing. Now is the time to do it. If you come back later to do it, it's going to cost a lot more.

Mr. Vandenberg stated the contractor was on board and has given us that rough estimate. They do have a signing contract that they've already been working with but again the cost may not come down. That number was given to me to, to bring to this Council for discussion.

Councilor Montero asked if there has been any input, feedback studies, etc., about how this metal siding stands up to our coastal weather.

Mr. Vandenberg stated they've done some testing with this metal and it's very durable. The look is similar to what the Seaside Times Theater put on their siding roughly over five years ago and it's held up very well from the elements. This has been tested and it's been through processes of durability and based on the wind factor and obviously other factors that we are on the coast really very good quality product.

Mayor Barber stated is it aluminum or stainless steel.

Mr. Vandenberg stated he would be speculating at this point but I know it won't rust.

Councilor Morrissey stated his concern is just getting a bid from the contractor, you really have no way of knowing if it's competitive. We're not going to. I just don't know if that's a good price at this point.

Mayor Barber stated you can take it back to your commission and keep us posted in general.

Council President Frank stated he sort of agrees with Councilor Wright, although I would like to see what it would look like with the other side. And so this is a big cost difference.

Even if we look at the lifespan of metal, you're going to paint it every five to seven years at \$10,000 to the cost difference between that metal.

Mr. Vandenberg stated he knows that we've paid around \$30,000 for the last paint job that we did and that was the entire facility. So I know costs have gone up in the last seven years so that number is an estimate, but I'll take this back to the commission and find out what their input is and we will have the architect come up with a couple of renderings of what that would look like with the metal versus the painting and get a little bit better visual with that. I'll bring that back at my next update.

Councilor Montero asked Russ if he was ready to do hardhat tours of the facility.

Mr. Vandenberg stated we have given Kim some dates as soon as she can get together with everybody we will set that time.

Councilor Phillips stated she was at a function on Saturday night and walking into that building the way the staff has set everything up, you wouldn't know there was construction going on. It's very elegant looking with the pipe and drape and it was just unbelievable.

**COMMENTS –
CITY STAFF
AND OTHERS**

Mayor Barber stated we have come to the end of the agenda and he knows the city staff probably has 20 minutes each that they want to share. Anything pressing from the city staff for us to hear.

Dave Ham, Seaside Police Chief, stated I mentioned it the last meeting, the third memorial for Jason Goodding was coming up and Lieutenant Bruce Holt would be taking care of the ceremony at the police department on February 5, 2019. Chief Ham further stated and also in the news today or yesterday afternoon, we did have a pretty significant traffic stop where we took quite a bit of methamphetamine, heroin and a local drug dealer put away for hopefully a significant amount of time. We will see how that works out, but we're pretty excited about that.

Mr. McDowell stated the air handlers were installed at the Sewer Treatment Plant. We're doing some fine tuning so three filter system, so hopefully any fumes from that area will cease.

Jon Rahl, Assistant City Manager, stated there was a roadmap meeting with CoastCom Wave and our IT Coordinator Jason Rogan this Friday.

COMMENTS – COUNCIL

Mayor Barber asked for comments from the Council.

Councilor Wright stated he planned to send the Council goals or to Senator Johnson and Representative Mitchell and told them I wanted to keep them apprised of what's going on.

Mayor Barber stated he had a short quote knowing Council was going to have a difficult decision to make tonight. This is an Elia Kazan quote: "What's called a difficult decision is a difficult decision because either way you go there aren't penalties".

ADJOURNMENT

The regular meeting adjourned at 9:36 PM.

Kim Jordan, City Recorder

JAY BARBER, MAYOR