

City Council
May 27, 2008

Mayor Johnson called the regularly scheduled meeting to order at 7:00 PM.

Upon roll call the following members were present: Reed, Boyle Barrett, Montgomery, Ramsey, McNally, Twardoski and Weigelt. Also in attendance were City Administrator Dave Schmidt and City Attorney Sue Sampson.

Mayor Johnson asked for changes, additions or deletions to the Agenda tonight. There were none. Mayor Johnson stated that she is going to do something a little different tonight and start out with the staff reports so the Fire Chief doesn't have to sit through the entire meeting.

Staff Reports:

Chief Predmore stated that he would like to remind Council of the recruit academy graduation this coming Thursday night at 7 PM at the White River Annex on A Street. Also, the Buckley Fire Department was awarded the top fund raising team in the stair climb again this year. The Leukemia & Lymphoma Society is planning on trying to get on an Agenda soon to come out and actually address the Council in appreciation for the efforts that we put forth into that. Chief Predmore said that the new engine is at H&W which is the dealer that we purchased it through in Hillsboro, Oregon. They had a couple of final details to do on the engine as well as when they transported it from here to Hillsboro they caught a rock in the windshield so they're waiting for a new windshield to get there. Chief Predmore also wanted to tell the Council about a contribution that was made to the EMS fund for the aid car from the Friends of Spiketon Ditch. Mr. McBroom brought in a \$330 contribution so we thank them for that. The last thing is a Lease Agreement that he just handed out to you tonight. If you remember earlier in the year we were awarded a Safer Grant, which is the staffing grant program for both career and volunteer fire departments. We applied for funding under volunteer recruitment and retention, and the purpose of that was to do some recruitment work, but the other part of that was also to expand the resident program that we originally started back in July of this year when we renovated the upstairs of the fire station. That program has proven to be extremely successful for us and is now something that I know we could not live without, and that is why we applied for the grant to expand that program. Because we don't have the ability to expand it within our existing facility, we needed to go look at alternative facilities, and I brought those proposals for those different sites that we considered to the Public Safety Committee at their last meeting. We requested proposals from four different sites. In evaluating all of the benefits and potential weaknesses of each of those sites, the recommendation to Public Safety Committee was that we move forward with a Lease Agreement for the Whitmore property at 152 South Cedar. So with that, I asked City Attorney Sampson to assist in preparing language for a Lease Agreement and that is what is before you tonight. This has been reviewed by the property owner, and I think that there is maybe only one change to it, and that is that there is nowhere in the Lease

Agreement right now that specifically mentions any of the appliances, whether they are provided or are not provided, and so that is something that they would like to have in the language of the Lease Agreement. I think that we will just be adding one more bullet to define the appliances and other than that it met their satisfaction. Right now it looks like we would be able to take possession of the property on June 15, which is why I'm bringing it to you without that one bullet item added. I'm asking for your consideration and approval to authorize the Mayor to enter into that Agreement with that one change that addresses the appliances so that we will have the Agreement in place so that we can have the new residents ready to go on June 15th. **Council member Weigelt moved to approve the Lease Agreement between Ken and Linda Whitmore and the City of Buckley, subject to any minor changes that need to be made by the City Administrator or the Mayor. Council member Twardoski seconded the motion. Motion carried.**

Mayor Johnson stated that we will come back to the remainder of the Staff Reports after the Committee Reports.

Admin & Finance: Council member Ramsey stated they did not have a meeting and their next scheduled meeting is June 2 at 6:30 PM.

Public Safety: Council member Boyle Barrett stated that Public Safety has not had a meeting. Their next meeting will be June 4 at 5 PM at City Hall.

Building & Zoning: Council member Twardoski stated that they have been meeting regularly. Their next meeting is scheduled for 6 PM June 2nd, and they are scheduling another for June 12 at 7 PM and the 19th at 7 PM at City Hall. Also, my neighbor asked me when is the City going to fix his sidewalk. Council member Twardoski said it's probably one of the original sidewalks in Buckley. It is directly in front of his house and it's broken up. City Administrator Schmidt stated that he imagines that the repair is on a list because we have that sidewalk priority list and we've been grading it. We took care of the highest priority sidewalks years ago and then we haven't had the funds to go through with the next phase of the project, but we have several on there that have been re-rated and given a higher priority. We had \$25,000 budgeted to do a sidewalk project this year but because the bids came in for Main Street a lot higher we have to use the extra money to be able to get that project done, so I have no idea if it is going to be enough left at the end to do some or not.

Utilities: Council member McNally stated that they have a meeting scheduled for June 3 at 6 PM at City Hall.

Streets, Sidewalks & Storm Drains: Council member Weigelt stated that first he would like to talk about sidewalks; he thinks we should put in the budget \$25,000 and then that money is frozen for sidewalks. Council member Weigelt said that they had a meeting on the 20th and covered a lot of territory. The first thing discussed was the Copperwynd Street Trees. This is something that has been going on for about four or five years where everyone is asking about the trees and whose responsibility is this. So, City

Administrator Schmidt put it into a policy to clarify it for everybody and it is under Tab 13 tonight. The Catch Basin Water Management Unit is a \$1,000 pilot. You put it in the catch basin and it catches all kinds of chemicals and contaminants. This could go in with our stormwater plan because eventually we will probably have to screen out the contaminants and we will have to treat our stormwater and this would be a step in that direction. We talked about the Hendricks Frontage Waiver and that is on the agenda tonight. Regarding a low impact development workshop, Council member Montgomery has been talking to some people who were talking about maybe doing a low impact development workshop here in Buckley. Council member Weigelt said that the next item was retractable studded tires. A guy has developed a studded tire which is retractable. With the flip of a switch basically it retracts the studs and all it does is cause a little bit of loss of air so you just fill your tires up a little bit once you retract the studs. There are five states that have passed the approval to use these things and Washington is one of them. They talked briefly about Interwest. We tried to find out a little bit about what kind of a neighbor Interwest is and it turns out that they are a good neighbor in terms of where they are located and that they do good work and they have good relationships with the people around them so it sounds like this is going to be a good thing for us. The Stormwater Plan was a lively discussion, and I asked City Administrator Schmidt to just publish the document without all the tracked changes. The idea is that we publish the document without all the changes and bring it to Council, then we have a hearing on it and get input to keep this thing moving forward because it is such a complex document that if we don't keep it moving forward it will just die. City Administrator Schmidt said before we can hold a hearing we have to have a draft document that everybody can agree on, and the problem is there are differing opinions about what should go in the document. So that we didn't become bogged down, or just have the process stop, Council member Weigelt, as the Chairperson, said lets just take what we have to the full Council, have our discussion here and come up with whatever draft we are going to have and then schedule a hearing after that. So that is where we are.

Parks, Recreation & Cemetery: Council member Montgomery stated they did not have a meeting, but we have a meeting tomorrow evening at 6:30 at City Hall.

Community Services: Council member Reed stated they have not had a meeting since the last Council meeting. He would like to take this opportunity to congratulate the staff on an incredible Youth Center Grand Opening, and the fact that we coordinated with the Skate Park festivities was excellent. He heard from one of the parents of a skater that skates for Marrada, who put on the competition today, that it was a great turnout and in fact it was much larger than what Marrada expected for here in Buckley. We talked about that and I asked how do we get that kind of a crowd throughout the summer, or at least frequently throughout the summer, and the suggestion was made to make it a weekday event. We had talked about holding it on the weekend and maybe in conjunction with the Farmers Market, and he explained to me that the serious skaters won't be here; you won't get the crowd that was here today because they are going to the big events where they can win tournament money. But, if you do it on a Tuesday or Thursday afternoon like we had this event, he said there is nothing else happening. Council member Montgomery was approached about adding or changing features at the

Skate Park. If those that were involved recall, that was one of the reasons why we went with this type of park so that as a feature became too mundane or worn out we could change, either relocate it or add a feature to it. So, that is something that we will be looking at in our committee, or Parks will look at it over the summer and my request was that we get some feedback from the skaters and ask what is it that they really need to have, and then we could start looking at a budget item for next year. Council member Boyle Barrett said that James made a suggestion about how it would be great if they could mention something about kids taking ownership of the park and policing themselves, so she talked to Seth and she heard them make the announcement before she left. He also said that he'd really like to see us offer some classes. They cater to the younger groups and then kind of the tweeners, but he said that would help draw people up here and it is not too difficult to put on. Mayor Johnson said that Recreation Services Coordinator Bacon spoke to him about that, so that is a possibility for one of the programs offered through the Youth Center this summer. Council member Montgomery said that Marrada is very interested in coming back and putting on more events.

Mayor's Report:

Mayor Johnson said that the cemetery probably looked the best it has ever looked on Memorial Day, and the small ceremony that we've had in the past was expanded this year. Our Fire Department Honor Guard participated and they had the old truck down there that they came in on, and it was very nicely done. Mayor Johnson said that she and City Administrator Schmidt have a meeting tomorrow in Tacoma with PSE and Pierce County about purchase of property, and I understand that Cascade Land Conservancy will be there also. So, we will be doing a strategy session tomorrow. Mayor Johnson said on the 12th of June she has a meeting with Auburn, Bonney Lake, Sumner and the head of the Department of Ecology, Jay Manning, to discuss water rights and Lake Tapps. He's going to be listening to our response to what all is going on around here. It is not often that you get a private audience with him, so we feel pretty lucky. The trip to China that I had scheduled has been postponed until at least the end of June because one of the areas that we will be going to is the area that has been hardest hit by the earthquake. Mayor Johnson said that the AWC Convention is coming up and she and Council member Reed will both be there, and hopefully some of you can join us at least for a day.

Council member Weigelt stated that the Plateau Saturday Market starts Saturday. They figure on maybe 12 vendors out there the first time, and I was talking to a lot of people about maybe having a Buckley-wide garage sale on a specific weekend that would then also draw people in. So, maybe on a weekend when there is nothing else going on we do a Buckley-wide garage sale. A short discussion ensued regarding other communities that do this. Council member Weigelt said he was talking about people having the garage sales at their own houses.

Staff Reports:

City Administrator Schmidt stated that on Friday he and the Mayor have a meeting with DSHS, King County and Washington State Parks to look at the possibility of state parks in the area. With DSHS's one thousand acres next to the school, and our possible purchase of one hundred and fifty acres, State Parks is actually interested, so we will meet with them on Friday to discuss that potential.

Tuesday we opened the bids for Phase IIE of the Wastewater Treatment Plant and the low bidder came in about \$30,000 higher than what the engineer's estimate was. Prospect, who is our contractor on-site, actually was the middle bidder. We had tentatively planned to have it on agenda tonight for award, but there seem to be some irregularities in the bid documents. City Administrator Schmidt said that Washington State law says that if the general contractor is going to perform specialty or sub-contract work, like plumbing or electrical, then in the place where it has to list all the sub-contractors on the project they have to list themselves for that particular area that they are going to do the work. In this case the first and the third bidders did not do that. I thought it was clear in the directions, but because two out of three didn't do it there could be some ambiguity there. State Statute says that if you do not list yourself then your bid is considered unresponsive and it is void. That means that the low bidder would be thrown out and the second bidder would step forward, and then the Council would have to consider the second bidder. Our second bidder, which is Prospect, filed an appeal immediately on our ability to award the project, so we have been navigating our way through the legal process before we can formulate a recommendation to Council. It has basically come down to one of two things, we either award to Prospect, whose bid is \$40,000 higher than the low bid, and in so doing we have to declare the first bid unresponsive and void, or we can reject all bids based on the fact that there seems to be a communication error and throw all of them out and go back out for re-advertisement, in which case the Council won't be looking at this on the agenda until about the 10th of June. If you authorized rejection and re-advertisement that will probably put us into July before we can award, which pushes the project out. Those are the options you will be asked to consider at the June 10th meeting. Mayor Johnson said her gut reaction on this is to throw them all out and start over because now everyone knows what they are bidding and I'm thinking that they may be sharpening their pencils a little bit if they really want this project. City Administrator Schmidt said that the low bidder, although they have never done any work here, comes with impeccable credentials. City Attorney Sampson said that this is kind of an unusual little quirk in the Public Works bid laws. As you know, you have to send out for bid for projects like this, but there is a specific statutory requirement that the prime contractor must identify his specialty subs, the plumber and the electrician in particular, unless he is going to reserve that work for himself. If he is going to do that work himself, he is required to write on the bid form that he is going to do it for himself. If he fails to do that, and that is the error that bidder number one and bidder number three both made, then the law says that their bid is void. That means non-negotiable; we may not enter a contract with that person, and if a City chose to award to them, then the City officials who made that award stand personally liable. So, there is just no way it can be awarded to the low bidder, or if the second bidder should fall out there is no way it could be

awarded to the third bidder either. City Attorney Sampson said she spent some time this afternoon looking at the bid forms and they do clearly tell the contractors that they have to list their specialty contractors. I was trying to figure out how this could have been misunderstood and I do see that our bid specifications say that you have to list your subcontractors unless you are customarily engaged in the specialty work yourself. City Administrator Schmidt said there is some ambiguity throughout the bid specifications. Mayor Johnson said so again, back to her gut feeling, she thinks it is back to the drawing board. A discussion ensued regarding the State laws and bid requirements. City Administrator Schmidt said he knows this may be a potential litigation question and we may want to consider this under Executive Session, but if the City declared the low bidder as unresponsive and void under the State statute, because of the ambiguity in the bid specifications, if the Council chose to award to the next person in line, would the first person have any legal recourse to come back to the City and say that wasn't clear in the bid specs? City Attorney Sampson said it is theoretically possible but not probable. Usually if there is a challenge to a bid spec on its ambiguity, it's ambiguity in the classical sense that there are two different ways of reading the spec, both of which are reasonable, then in that case the author of the specs, namely the City, is stuck with whatever interpretation the bidder puts on it, and if there is a mistake because there are two reasonable readings and that is not what the City meant then the City bears the cost of the difference.

CITIZEN PARTICIPATION

Sandy Ramsey – Carnival Change: Sandy Ramsey, 263 Hamilton Ct. The carnival has changed again because of conflicts with integration, can't get the help, and fuel costs. The carnival is now scheduled to be in Buckley the 13, 14 and 15 in Buckley.

MAIN AGENDA

ORD No. 17-08: Amending Department of Public Works: City Administrator Schmidt said that this is part of our ongoing saga to update the code book based on the legal analysis that was done in 2004. **Council member Weigelt moved to approve Ordinance No. 17-08 Amending Department of Public Works. Council member Boyle Barrett seconded the motion.** Council member McNally said he has a question about how it's written and removing the word "City Engineer" and maybe somebody in Admin & Finance could tell me how much we spend every year on an outside City engineer, and is the cost difference that big of a deal. If we hired a Public Works Superintendent or Supervisor that is an engineer, would we save money in the long run or spend more money because we hired an engineer. Council member Reed said that when you have an engineer it's someone who specializes in one particular area, but when we do it the way we've been doing it we have access to a much broader range of expertise. City Administrator Schmidt said you are still going to outsource a lot of the work because the firm has other expertise. There is nothing that says by eliminating civil engineer from this that the City can't require the Public Works Director to have a civil engineering degree. This just takes the civil engineer out of the actual title here under the duties. A lengthy discussion ensued. Council member Ramsey offered to have her committee look

at this again at their next meeting. Council member Montgomery said he has a question down at the bottom of 2.20.030 the Parks & Cemetery Division, and he believes that they also kind of take care of the street trees. City Administrator Schmidt said that is correct right now. For now we have been using the parks and the utility workers both to work on street trees because we don't have the streets and stormwater section established, but eventually we will have that street and stormwater section and hopefully somebody within that department will be capable of doing that. Council member Montgomery said he was just wondering if it would make sense to have street trees come under the parks and cemetery division just simply due to the fact that you are more likely to have people qualified as Master Gardeners, or maybe some with arborist courses or something like that. City Administrator Schmidt said sure, that is up to you guys. Council member Montgomery said he would like to add "street trees within the City right-of-way" to the responsibilities of the parks and cemetery division. City Administrator Schmidt said you don't need "right-of-ways" you can just say "street trees." Council member Weigelt stated that he can accept that amendment by Council member Montgomery as part of the motion. Council member Boyle Barrett said she made the second and will accept that amendment. **Motion carried.**

Hendricks Frontage Waiver: Council member McNally moved to approve the **Hendricks Frontage Waiver subject to the satisfactory compliance with the recommended conditions in the Staff Report. Council member Montgomery seconded the motion.** Council member Boyle Barrett said it says in the recommended conditions that there will be a concrete driveway approach and in the drawing in the back their proposed drive is from the alley access, so are we forcing them to put a concrete drive in the front? City Administrator Schmidt said no. The driveway in the front is a standard specification right out of the Public Works Development Guidelines; it is standard language that we use. If they are not going to have an access in the front, they will not be required to put a driveway in. A discussion ensued regarding access to the property. **Motion carried.**

Copperwynd Street Tree Policy: Council member Weigelt stated that this has been going on a long time. There are some arguments over the trees in the development and who is supposed to take care of them. Now it's come to the association people and they don't know, so this will provide some guidance for them, and it pretty much covers the questions that they had asked about. It basically says you can cut the trees down but you have to check with the City before you do it, and you also have to check in with the homeowners association. In the back there is a list, and we can always change this list, but at least it's a list that citizens know that if they have to cut the tree down they can replace it with one of these. A lot of people love the trees and they want to be sure that they are able to replace it. So, we can always tweak this later but it would give the homeowners association some guidance at least for the time being. Council member Boyle Barrett stated when you are looking at this paper because you want to do something with a tree, and you live in Copperwynd, under maintenance you read that little bulleted paragraph and it says "shall be immediately removed" and then it says you should contact the City of Buckley Public Works Department. Council member Boyle Barrett said I just don't want it to be confusing to them. **Council member Reed moved**

to approve the Copperwynd Street Tree Policy. Council member Ramsey seconded the motion. Council member Weigelt said if we take that one bullet out then I think it still is clear, but do you think we need to be more clear when it's wrecking the sidewalk, that you really need to get a hold of somebody right away? With that change I would recommend that we pass it. Council member Weigelt asked City Administrator Schmidt if we just said that this is the Street Tree Policy period, and don't use the word Copperwynd, could we then use this anywhere? City Administrator Schmidt said he thinks if you are going to pass this, pass this for Copperwynd, and then step back and look at it and try to either tweak it or develop it as a document that would work city-wide, but start off with this. Mayor Johnson we need to adopt this for Copperwynd and then use it as kind of a template or boilerplate to take it from there. City Administrator Schmidt suggested that we remove "immediately removed" and add in "shall automatically be eligible for removal." Mayor Johnson said she doesn't like the words "shall" and "immediately", but the homeowners should contact both the homeowners association and the Public Works Department to report trees that are causing damage. **Council member Reed moved to amend the Copperwynd Street Tree Policy to reflect changes under the fourth bullet point under Maintenance to read "trees identified as causing damage to any infrastructure such as sidewalks, curbs, gutters, streets or utilities should be immediately reported to the homeowners association and City Public Works Department."** Council member Montgomery seconded the amended motion. **Amended motion carried. Main motion carried.**

Draft Stormwater Plan Discussion: Council member Weigelt moved to approve the Stormwater Management Plan for the purposes of discussion with the intent to take this to a Public Hearing at the soonest possible opportunity. Council member Reed seconded the motion. Council member Weigelt said we had a huge problem with stormwater in the City of Buckley. We did a lot of work and spent a lot of time going over the plans that the engineers brought in. We brought it to the Council and saw the pictures up on the wall, and when I thought that we pretty well agreed that we could work with this last plan, it came back with a lot of narratives and I'm beginning to think maybe the merging of the cool schematic with all the pipes with the narrative is sort of what tripped us up. So, the key is to have a discussion and see if we can get the two merged to the point that we can get it to a public hearing and get it approved. A very lengthy discussion ensued regarding various aspects of the agreement and whether or not it is the best document to take to Public Hearing, and that each new revision should be noted as such. Mayor Johnson said that her recommendation is that we send this document to Public Hearing like Council member Weigelt has said to find out what the fatal flaws are because we can argue this until midnight and start again tomorrow morning and continue on. Council member Weigelt said he doesn't want City Administrator Schmidt to feel like he's boxed in here. I would like for him, before the hearing, to go through this document and if he finds an obvious mistake to fix it because what we deal with after the hearing will be the document that the committee and/or the Council is going to work off of, so I don't want to say it has to be exactly this. Once the hearing has taken place, we will have a document to work off of. **Motion carried.**

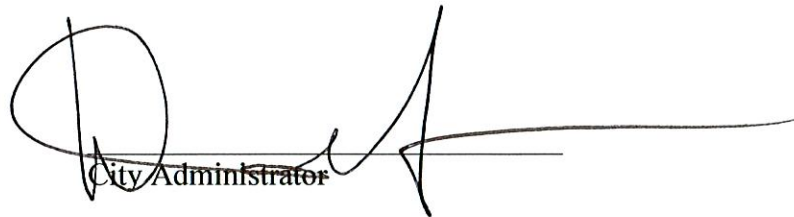
Council member Reed moved to approve the Consent Agenda. Council member Twardoski seconded the motion and the motion carried.

Approve the minutes of the May 13, 2008 Council meeting.

Claim check numbers 41354 through 41382, in the amount of \$464,490.27, for the period of May 14 through May 27, 2008 are hereby approved and ordered paid this 27th day of May 2008.

With nothing further the meeting was adjourned at 9:07 PM.


Mayor


City Administrator