



## BUCKLEY CITY COUNCIL MEETING AGENDA

August 25, 2009

Multi-Purpose Center, 811 Main Street

City Council Meeting

Opening 7:00 P.M.

Call to Order  
Pledge of Allegiance  
Roll Call of Council Members

Next Ordinance #09-09  
Next Resolution #09-16  
Next Agenda Bill #AB09-76

### Committee Reports

1. Admin & Finance
2. Public Safety
3. Building & Zoning
4. Utilities
5. Streets, Sidewalks & Storm Drains
6. Parks & Rec & Cemetery
7. Community Services
8. Mayor's Report:
9. Staff Reports:

Ramsey  
Barrett  
Twardoski  
McNally  
Patson  
Montgomery  
Reed  
Johnson

### Citizen Participation

*Time Limit of Five Minutes* (Must sign up at City Hall by Wednesday prior to the Council Meeting)

10. Angela Toman – Spiketon Ditch
11. Ron Froemke – Spiketon Ditch

### Main Agenda

12. RES 09-\_\_: Designating Agent for Hazard Mitigation Grant
13. Water Trans Main Hazard Mitigation Grant – Presentation & Discussion
14. Scope of Work: Elk Meadows Drainage Ditch Conceptual Design
15. Change Order #1: Garage Remodel to add Shelving
16. ORD \_\_-09: Interim Extending Time Limit for Subdivision Bond

### Consent Agenda

17. A. Approve Minutes of August 14, 2009
- B. Claims

*Council may add and take action on other items not listed on this agenda*

**City Council**  
**August 25, 2009**

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

Upon roll call the following members were present: Reed, Montgomery, McNally, Boyle Barrett, Ramsey and Twardoski. Council member Patson was absent and excused. Also in attendance were City Administrator Dave Schmidt and City Attorney Phil Olbrechts.

Mayor Johnson asked for any deletions, corrections or additions to the Agenda. City Administrator Schmidt stated that the Fire Chief has asked that we add an Executive Session on the purchase of real estate.

**Admin & Finance:** Council member Ramsey stated that they did not have a meeting. Their next scheduled meeting is Monday the 31<sup>st</sup> at 5 PM, and it is their first budget meeting.

**Public Safety:** Council member Boyle Barrett stated that they have not had a meeting but they do need to schedule a meeting somewhere between all the budget meetings, probably during the month of September.

**Building & Zoning:** Council member Twardoski stated they have not had a meeting. Their next meeting is the 14<sup>th</sup> at 6 PM here. And Associate Planner Rashid wants them to have a meeting before the 14<sup>th</sup>. It was decided that Building & Zoning will meet on Thursday, August 27th at 6:00 PM at City Hall.

**Utilities:** Council member McNally stated that Utilities has not had a meeting. Their next meeting is going to be their first budget meeting, which will be next Tuesday at 6:30 PM.

**Streets, Sidewalks & Storm Drains:** Council member Montgomery said they did have a meeting and the main topic is #14 on tonight's Agenda, and everyone has a copy of the Minutes.

**Parks, Recreation & Cemetery:** Council member Montgomery stated they did not have a meeting. Their next scheduled meeting is Sept. 2<sup>nd</sup> at 7:00 PM at City Hall.

**Community Services:** Council member Reed stated they have not had a meeting since the last Council meeting. We have a meeting scheduled for Sept. 14<sup>th</sup> at 7:30 PM at City Hall. Council member Reed said he had the opportunity to speak with Rick McLaughlin, of McLaughlin Group, and they are a design team that does white water attractions. We had a preliminary discussion and he said the three things that you need for a white water attraction are flow, drop and access. We were able to pull the flow readings off of the Boise Creek meter station by the bridge, and I sent him a Google map coordinate so that he can take a look at the facilities. He said it looks like with our access to the river with

the park and the trail head that, preliminarily, we have the basics needed to do something. He is recommending an in-stream attraction. We talked about the river being a salmon supporting river, but also the fact that we have a diversion dam and Mud Mountain Dam on the stream. He is aware of what we are looking at, and he is aware of issues with fisheries and the tribes out of the Northwest. He is based out of Denver and I am asking him to send in a proposal to do the preliminary evaluation. It looks good, and his one comment was “how much do you want to spend?” Ultimately, that is going to be the deciding factor. Council member Reed stated that there are funding sources out there that can be drawn on, and he has asked for a Statement of Work. They will be presenting this probably under Parks.

Council member Boyle Barrett said she would like to report on Families First Coalition. She is the Council representative to Families First Coalition as well as the Facilitator of that group. A point brought up at the meeting is that basically the need for services is up all around our area, and there is lots of difficulty with people paying their bills and providing for their kids to get back to school. Another item brought up is just a reminder that there are going to be 900 kids on the Glacier Middle Campus because of the two middle schools being combined, so we are going to see a lot more traffic going through town early morning and late afternoon. We are hoping that will boost participation at the Youth Center and advance those programs. The other thing was that the Coalition voted on the priority projects for the coming year and it looks like we are going to be doing another set of Youth Forums in the school district where we go in and have the kids identify what they perceive as the needs in the community, and then we will be holding a Community Summit that will pull together all that information.

### **Mayor’s Report:**

Mayor Johnson stated that on Thursday night she will be attending a meeting at Rainier School. The State Legislature wants to cut 250 beds from the five residential facilities that the State has. This is a meeting with the consultant that is heading up that study as to whether or not it is feasible. The City is going to have to take a real active stance on this because this is 1,000 employees, and every single resident of Rainier School is a resident of Buckley. Mayor Johnson said when she has more information she will bring it back to the Council, but this is a good opportunity for us to be contacting our legislators and saying that this is just not acceptable.

Mayor Johnson stated that she received a call from the head of the Pierce County Library and they are going to set up a meeting to come out and talk to us about what their vision is and what they want to do. They know our library is under size; however, they have no money.

Mayor Johnson said you should all have received a letter from the auditor. Tomorrow is what is called the entrance. It is about a 10 minute meeting at 9:30 AM and they will tell us what they are going to be looking at. This is our first Federal audit. Everything has been going very smoothly and they will be wrapping up in another three weeks.

Mayor Johnson stated that the Puyallup River Watershed Group is having a tour tomorrow that starts out at 10:30 AM at the Sumner Library and they are going up to the Carbon River entrance to the National Park to talk about flood control and the damage that has been done from the National Park down. She will not be attending it because of other commitments, but she thought maybe someone would be interested.

Mayor Johnson said that tomorrow with the auditor we can only have three Council members there. Council members Boyle Barrett and McNally said they could attend.

### **Staff Reports:**

City Administrator Schmidt stated that we have three employees we are going to be presenting plaques to: Kenny Sutphin has 20 years with the City, Tim Personius has 25 years, and Alan Wolfe has 25 years.

### **Citizen Participation:**

**Angela Toman, 834 Sheets Road, Buckley:** I was just coming in to address the Council about recent activity happening on Spiketon Ditch. I don't know if any of you were informed, or at what level you're informed, but the water that was up at the reservoir has now been re-diverted back down to Spiketon Ditch, which flows through several properties, most of which the City does have a legal easement on, mine they do not. They do not have an easement to run the water, trespass, maintain or do anything on that property. It has been off for almost two years, I believe closer to a year and a half, no maintenance has been done; nothing has been done at all on the property. We received a letter back on June 8<sup>th</sup>, actually dated June 8<sup>th</sup>, that we got on the 11<sup>th</sup>, and I immediately called the City and let them know, whoa this letter says you are turning water on, there is no easement there, you can't do it, there is no ditch there anymore, this can't happen. I received a phone call back from Mr. Schmidt saying they were going to wait until Monday and get some further information, 4:58 they turned it on, no prep, no nothing. Damage to my property once again. I had sent a letter to the Mayor, which I don't know if any of you guys have a copy of or are interested in seeing, saying the same thing, the damages it would cause, the irritation it has caused, the problems and everything with having that water on. I took several pictures, I asked for help and assistance on what to do and why it was done. I did get a response back from her immediately, thank you for that. The response was basically that her hands were tied; there is nothing we can do, the Puyallup Tribe is making us do this. So, we requested public documents to find out what happened when, where and why, which I have not had the best luck receiving information on. In the paperwork that I have found, I did find a paper from Fish and Wildlife requesting that the water be diverted back from South Prairie Creek back to South Prairie Creek, which that is how it bypassed my property, and or mitigates. I have asked for what the mitigation actions were or what they've tried to do and I've gotten no response. I have asked why the Puyallup Tribe letter says they want the water on in September and October, and it has been agreed upon to do for six months out of the year, once again with no easements, no preparation, and I've gotten no response. I asked for additional documents to find out what was happening and I'm getting random documents, not

complete documents. I have since retained an attorney with another property owner to have this water turned off. You can't legally trespass that many thousands of gallons through somebody's property, and I just wanted to make sure that the City was aware of what was going on. I read through the SEPA letter which was dated in 6/05 when they turned that and put in the valve which stopped the water going down what was called Spiketon Ditch to Levesque Road. And reviewing that it says that they will no longer be using the Spiketon Ditch. Once again it has been off for almost two years and we had a 24-hour notice that thousands of gallons would be coming down through the middle of my yard with no prep, no warning, no nothing. That all was in the middle of June and since then we have just been spinning our wheels trying to get documents and trying to understand what, where and why it's happening, and I'm getting nowhere. The bottom line is they don't own an easement on my property. I will not allow the City to run that many gallons of water through the middle of my yard and flood and damage my property. So, I just wanted to see if any of you are aware of what was going on and if you had any information as to what to do about it. Mayor Johnson stated that the Council has been made aware that the water was turned on. Ms. Toman asked was the Council advised prior to the water being turned on the damages and/or the fact that there wasn't easements to everyone's property in order to do that? Was any SEPA documents done to divert it back to see the effects it would have on the environment and/or private property owners? Council member McNally said no. Toman stated "no SEPA?" Were you guys advised prior to the water being turned on that there were two properties that don't have a legal easement? Ms. Toman said okay, thank you for your time, I appreciate it, we will just continue on with what we are doing.

**Ron & Diana Froemke, 724 Klink Street, Buckley, WA.** Mr. Froemke said we are here to follow up on e-mails and phone conversations we had that occurred on the 14<sup>th</sup> of June, 15<sup>th</sup> of June to the Mayor and the City Administrator regarding the City's decision to redirect the water reservoir overflow back to Spiketon Ditch. We followed up with a letter dated June 13<sup>th</sup> to the Mayor, the City Administrator and the City Council, which we assumed you all received and read. On Friday, June 13<sup>th</sup>, we were notified by a neighbor that a letter dated June 8<sup>th</sup> had been sent out by the City Administrator to inform property owners whose property Spiketon Ditch runs through that the water was being redirected into Spiketon Ditch. The parcel numbers were listed at the top of the letter to those property owners who were sent letters. Our parcel number was not on the letter, nor did we receive a letter. Mayor Johnson said we are not sure how that got left off, his parcel number. We got an apology from the Mayor via e-mail, and the City Administrator that we were overlooked. We found this pretty questionable, and we are one of two property owners that you have no easement on. We asked for the water to be shut off since we did not want the water to trespass our property. We asked for any and all correspondence regarding this issue. We received twenty-five pages of the SEPA report and about twenty-five e-mails from the City and Dave Schmidt. Then we requested the same thing from the Department of Ecology and received 177 pages. Included in that 177 pages there were two letters both dated June 8, 2009 from Dave Schmidt. One that was sent out to the property owners that didn't include our tax parcel, and an identical one that was not sent out that had our tax parcel highlighted. We have received no other response from the City. We sent an e-mail that the problem would be

fixed easy by just only taking the water the City needs. We haven't had any other response so we've been forced to go get a lawyer.

Phil Olbrechts stated that he knows that the City Administrator has already provided you (Council) an explanatory memo of pretty much everything that is going on and I provided you a legal analysis as well. It is difficult to talk about this out in the open because we have so many parties wanting to sue the City over this. We have the Tribes wanting to sue the City for not diverting water down there. We have DOE threatening permit action if we don't put water down there. And then of course we have the property owners who don't want the water there, so we've got to navigate a difficult course. Right now the diversion is just temporary through November, which I guess is time best to protect the salmon which is the Tribal concern and also the Department of Ecology's. And then it would start again under the same circumstances I think next June. So, we've got to try to resolve this by next June, and right now our engineer is doing some title work to figure out what the easements are and which ones are there and which ones aren't because it is very odd that we have this long ditch that has been used for fifty years for water discharge, and it's still being used for storm water discharge, and yet there are two pieces in the middle of it that don't have easements. Why the City would have dug a ditch 50 or 60 years ago and not gotten easements from everybody is just very odd, so we want to check the title work first. We are working with the title company to see what happened there, and then we can go through the options at that time.

Mayor Johnson stated there are also newspaper articles. She stated that she has done some research at the museum and they talk about going around and getting all the easements, but they mention property owners who have long since passed away and moved away and parcels have been divided numerous times.

City Attorney Olbrechts said that usually when people buy a home they get a title report and it is very possible that this easement didn't show up in the title report for the home buyers because this easement was part of a much larger parcel a long time ago. So, we need to go back and make sure that wasn't overlooked. Then there is the other legal principal that if you basically do use property for more than ten years, it's called a prescriptive easement; it's created anyway even though it's not down on paper because again it was used for discharges for sixty years. So, again it is not a really pleasant spot to be in. I know that the City has been dealing with this for quite some time, and we are going to make some people very mad and the last people you want to make that mad are your own residents and we are certainly keeping that in mind and trying to do what we can to make them happy.

Mayor Johnson said she thinks absolutely everybody, the Council, the property owners, we are all between a rock and a hard place; this is an issue that has been on the table for years and we're trying to come up with a solution.

City Attorney Olbrechts said he didn't want to leave the impression that there are a lot of confidential documents and communication here; it is only the advice I give to the City Administrator or to the City Council, and that is it. To the City Council I think it's been

one memo, and to the City Administrator it's been a few e-mails. Everything else, as far as I recall, is fair game.

## **MAIN AGENDA**

### **RES 09-16: Designating Agent for Hazard Mitigation Grant:**

**Council member Montgomery moved to adopt Resolution No. 09-16 designating authorized representatives for a hazard mitigation grant application. Council member McNally seconded the motion.** City Administrator Schmidt stated that we have had to do one of these for every disaster event that we've had, and they also require it for a grant submittal as well. This just designates the representatives for the grant submittal. **Motion carried.**

### **Water Transmission Main Hazard Mitigation Grant – Presentation and Discussion:**

**Dominic Miller, City Engineer with Gray & Osborne, Olympia, WA:** City Engineering Miller stated that he is back; he was here two weeks ago. Last time we didn't have any public comment but I gave a presentation and I believe you have the materials, and I realize that there are some Council members that were not in attendance previously. We outlined at that time that it is a Hazard Mitigation Grant program that is separate from the FEMA disaster relief program. It is an opportunity to get money to prevent something from happening rather than cleaning up after it happens. We targeted two potential projects, both of which are replacements of sections of the City's water transmission line, the second of which is actually in the area where we have done one project already, repairing the road and drainage system, and we plan on doing another one this fall. Council member Reed asked if we would apply for both projects. City Engineer Miller said it was our recommendation that we apply for just one. There is a maximum dollar amount of \$1.5M and you need to demonstrate that the amount of money expended to repair the project over the life time of the project is 100% or greater than the cost to actually replace it at this time. We've done the numbers on Project #2 and it is a more viable project and we think it will score better with the Evaluation/Selection Committee. City Engineer Miller asked if there were any questions about the program, the process or the projects, and stated that it is due September 15th.

There was a short discussion among the Council.

Mayor Johnson asked if there was any public comment. There was no public comment for the record.

### **Scope of Work: Elk Meadows Drainage Ditch Conceptual Design:**

**Council member McNally moved to approve a Scope of Work for determination feasibility and design conceptual drawing of Elk Meadows Drainage Ditch Project and explore alternatives. Council member Montgomery seconded the motion.**

Council member Boyle Barrett stated that she pulled up the Capital Improvement Plan, which is Chapter 8 out of the Stormwater Plan, and it says right on there that the list of projects is in prioritized order, and the most important project that we have to do right now is the Spiketon Bridge culvert. We have spent \$50K to \$60K on the feasibility, and

we would be looking at \$40K to \$50K in design, and then we have the construction costs. There is only about \$340,000 in fund 306 right now, and we still need to pay the \$60K or \$70K. So, I am wondering where we are going to come up with \$25K for this project and still be able to do the Spiketon Ditch project conceivably next year; I don't see the funds as being there. Council member Boyle Barrett said that she does not agree with proceeding with this project when there are other projects ranked higher on the list that I believe have a larger benefit to more homes. We need to be good stewards of our finances in these difficult times, and I don't see this project as being fiscally responsible. A lengthy discussion ensued.

Mayor Johnson said that one of the things that hurts small cities in general with all the stimulus money that came out is we don't have shovel-ready projects. We don't have stuff that has already been engineered and everything on the shelf. This gets us one step closer.

**Council voted with a 3/3 tie. Mayor Johnson broke the tie by voting yes. Motion carried.**

**Change Order #1: Garage Remodel to Add Shelving:**

**Council member Montgomery moved to approve Change Order #1 for the City storage garage remodel to Sevon Homes, Inc. for \$3,500. Council member McNally seconded the motion.** Mayor Johnson stated that the reason this was not added in the remodel was because we weren't sure exactly what we wanted and what the configuration would look like. Staff looked at what was there and measured the boxes that will be stored, how high, how close to the ceiling and low to the floor, and came up with the configuration that we have here. We went to Costco, Home Depot, Lowes and State Surplus to see if there was anything available that would fit our needs, and it is going to cost us just as much to purchase something that might not be quite what we need, and this is exactly what we need. **Motion carried.**

**ORD 09-09: Interim Extending Time Limit for Subdivision Bond:**

City Administrator Schmidt stated that there has been a revised version passed out to the Council; the City Attorney made some additions. City Attorney Olbrechts stated that the ordinance in your packet deals with subdivision bonds, and that addresses a problem that a developer is currently having, and there may be more than one in the future. I bumped into Council member Boyle Barrett at City Hall today and she asked about adding permit expirations in there as well. She said she has heard that this is happening in other jurisdictions, and that is right actually. Because of the difficult economic times we're having right now, a lot of the developers are not getting the financing to finish the improvements that they're supposed to finish before a permit expires. So, what a lot of cities and counties are doing is adopting extensions to those expirations. So, the ordinance also has the added feature of allowing the extension of permit expiration for an additional year, and this covers all building permits, subdivision approvals and land use permits in the zoning code. **Council member Boyle Barrett moved to approve an interim ordinance extending the maximum time allowed for subdivision performance bonds and allowing for extension of the expiration of some**

**development permits for up to one year and fixing a time when the same shall become effective. Council member Montgomery seconded the motion.** A discussion ensued. **Motion carried.** City Attorney Olbrechts said since this is an interim ordinance, it has to come back to the Council for a hearing after the fact.

**CONSENT AGENDA**

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

Approve the Minutes of the August 11, 2009 Special City Council Meeting.

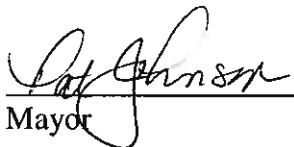
Claim check numbers 43953 through 44009, in the amount of \$54,692.33, for the period of August 12 through August 25, 2009, are hereby approved and ordered paid this 25<sup>th</sup> day of August. Check numbers 43940 through 43945 were voided and replaced with check numbers 43946 through 43952, due to a problem when printing those checks.


**The Council recessed for a short break after which they retreated into Executive Session at 9 PM for approximately 5 minutes with potential action. At approximately 9:10 PM, the Council requested an additional 5 minutes.**

**Council reconvened the City Council Meeting at 9:20 PM.**

**Council member Boyle Barrett moved to authorize the Mayor to enter into a Purchase and Sale Agreement on the Cedar Community Church property for \$150,000.00. Council member Twardoski seconded the motion. Motion carried.**

**With nothing further the meeting was adjourned at 9:21 PM.**

  
\_\_\_\_\_  
Mayor

  
\_\_\_\_\_  
City Administrator