

**Minutes of the Veneta City Council
Special Meeting
June 19, 2012**

Present: Mayor Sharon Hobart, Brittany Boothe, Thomas Cotter, Marion Esty, and Sandra Larson

Others: Ric Ingham, City Administrator; Brian Issa, Community Services Director; Chris Workman, City Recorder/HR Administrative Director; Darci Henneman, Assistant City Recorder; Michelle Ossowski, Fern Ridge Review

Mayor Hobart called the Veneta City Council to order at 4:00 p.m.

1. PUBLIC COMMENT

None

2. STAFF REPORTS

- a. Community Services Director Brian Issa
(1) Request for City Intervention into Pipeline Lawsuit Filed by LandWatch Lane County

Brian provided Council members with an update on the recent court filings by LandWatch Lane County (LandWatch). On May 30, 2012, LandWatch filed suit in US District Court against both USDA and US Fish and Wildlife Service (USFWS). The suit, which is based primarily on potential future impacts of Eugene's expanding Urban Growth Boundary (UGB), seeks a retraction of the letter of concurrence issued by USDA finding that the pipeline project would "not likely adversely affect" threatened and/or endangers species.

Staff has also received word through USDA that LandWatch intends to file an injunction by June 20th to stop the project. This request would likely be heard before a judge by July 16th after USDA & USFSW file responses to the request.

After conferring with both legal counsel and representatives from the federal agencies involved, staff determined that in order for the City to ensure that its issues, especially the potential harm to Veneta and its citizen, are considered by the court, the best course of action is for the City to become a party to the lawsuit. This would allow the City to file briefs and enter factual information into the case that would otherwise not be considered by the judge, either when hearing the request for injunction or the broader case.

The attorneys believe the sooner the City gets involved in the case the better; since the City has the most to lose. The financial impacts of becoming a party to the suit are potentially substantial, consisting primarily of attorney time. Not doing so may limit the number of arguments that can be brought to bear against LandWatch's claims, causing increased uncertainty that the project will come to fruition.

Ric said he spoke with Sam Goldstein of USDA in Portland about their ongoing strategies with the Washington DC attorneys. He said when a federal office is sued, is it represented by the US Department of Justice (DOJ). Mr. Goldstein suggested it would be beneficial for the City to join the lawsuit. City attorneys met with EWEB'S attorneys and Department of Justice (DOJ) attorneys yesterday. Staff did clarify we will not be able to recover legal fees.

Mayor Hobart said based on the information provided and the City's situation, she believes we have to intervene. Our story needs to be told. She said we are providing our current citizens with a safe source of water and it does it without causing major harm to any environmental group. She feels the City of Eugene's UGB isn't relative to the situation.

In response to a question from Brittany Boothe, Brian said if the City does not enter the lawsuit, our need for the pipeline cannot be brought into the case. If the project doesn't move forward, the deadline will be missed and the project goes away.

Ric said the primary lawsuit focuses on the City of Eugene. F&W focused on the biological opinion and with USDA RD, they can't talk about how they're being harmed because they're just providing funding if the project moves forward

Brian said LandWatch has filed several notices of intent to sue in which they argued that if the pipeline is built, Veneta would grow and create more traffic, etc. The biological assessment was revised to address many issues that are not included in the last lawsuit. LandWatch is having a difficult time connecting the pipeline project to potential harm to the butterflies.

In response to a question from Sandra Larson, Brian said we're not entirely clear how much of an impact we will have on the suit by joining in, but what we hear from the DOJ and our legal counsel is that doing nothing won't help at all.

Ric said the environmental groups bring lawsuits against the federal government all the time, logging, etc. He felt the City getting involved in the lawsuit puts a face on it and now it becomes more than a lawsuit against the federal government, it now includes an entire community. The longer the suit sits on the court's docket the more likely we will miss the construction deadline. Hopefully, entering into the lawsuit will move the lawsuit further up the court's docket calendar.

In response to questions from Thomas Cotter, Ric said from his many discussions with Rural Development (RD), it's likely LandWatch will continue to file lawsuits. Ric said legal fees would be paid out of the water fund and it's our hope and understanding it would be reimbursable under the pipeline funding package. He said the entire project needs to be completed before we get reimbursed from USDA. The thought is we will see the project completed and the USDA grant funds would cover our legal fees.

Brian said the more we spend on legal fees, the more costly the project becomes. Whether or not our arguments are weighed against the Endangered Species Act, we need to show we are interested as a party and will be harmed by the lawsuit.

In response to a question from Thomas Cotter, Ric said he's not sure what law firm will be representing the City. He said Carrie Connolly will be the primary attorney representing the City. The attorneys will work together but he said it's not likely we'll have a Speer Hoyt attorney present during the lawsuit. He said Ken Jones was at arbitration and Carrie Connolly is out of the country.

In response to a question from Sandra Larson, Brian said LandWatch can continually file lawsuits but our hope that this is the last effort on the part of LandWatch.

Ric said the City will not be reimbursed for any out of pocket costs on the project if the project is not completed. We need to secure financial backing and if we're in the middle of

a lawsuit, our cost will more than likely rise because of the risk of the lawsuit stopping the project.

Marion Esty said she heard comments and opinions from some Eugene residents about the availability of water if the west side of Eugene expands.

Mayor Hobart said the two areas that Eugene Envision is proposing to include in the City of Eugene's city limits are Highway 99 and the Bailey Hill Rd. area, which are both outside of Eugene's City limits.

Ric said whether it's Friends of Eugene or LandWatch Lane County, they have the greatest number of tools for filing lawsuits against a federal project. Hopefully, the opportunity to file lawsuits decreases the further we get into the project. Once this door is closed it's hard to say what direction LandWatch will take in the future.

In response to a question from Brittany Boothe, Brian said the attorneys believe involving the City as an intervening party will move the lawsuit further up the Court's docket calendar. He said many environmental groups file lawsuits against federal agencies (old growth logging, etc.), but rarely is a specific entity involved or named. Seeing that there are multiple parties involved, the amount of funding involved, and an expiration date for the project may influence the suit being streamlined to the top of the docket calendar.

In response to a question from Mayor Hobart, Ric said if LandWatch filed an injunction this week, a hearing on the matter would be held in mid-July and a decision rendered by the Judge would likely be made by end of July. Ric said that's only if an injunction was filed. He said this timeline was provided to our legal counsel by the DOJ.

In response to a question from Brittany Boothe, Brian said when a project is in progress and there's an immediate threat to species, an injunction if filed to stop the project completely until the court figures out what the impacts are. He said injunctions usually take precedence over other lawsuits. If LandWatch doesn't file an injunction, the case will follow a normal timeline of six months to a year but construction can continue as long as an injunction is not filed.

Brittany Boothe said it's disappointing that we are spending so much money. Not only will the City incur legal fees but loans will likely cost more because of the lawsuit.

Brian said it depends on the timing of the suit. He said if LandWatch files an injunction and loses but the case itself continues, that is less of a risk. He said anything that creates uncertainty or delay for the project will add cost to the project for both construction and interim financing.

In response to a question from Brittany Boothe, Brian said the cost burden exists whether or not the City is an intervening party. He said legal costs will be less if an injunction isn't filed but the cost burden will happen either way. He said the risk will be the same and will be viewed by the funding party whether the City's involved or not.

In response to a question from Brittany Boothe, Ric said the arguments and contextual nature of the lawsuit changes. There have been the same frivolous lawsuits against logging for years and the City intervening will put a face to the lawsuit and see how the cost of the lawsuit will be passed on to our residents.

Brittany Boothe said by becoming an intervening partner the City is passing on those costs to residents as well.

In response to a question from Sandra Larson, Ric said the project can continue to move forward until the judge rules in favor of LandWatch's injunction, which would require a stop order be put in place and all contractors on the job would continue to be paid until the issue is resolved.

Mayor Hobart said because there are so many unresolved issues and major concerns she felt this is an opportunity for the City to inform the judge of what harm will be done to this community if the pipeline doesn't go through. She said if we don't intervene we lose that opportunity. She wants our story out there and for that reason she felt we need to move forward.

Thomas Cotter felt the City should stand up and be heard.

Sandra Larsson said LandWatch stated in their own document that the City's aquifer is insufficient.

MOTION: Thomas Cotter made a motion to direct staff to take action as necessary to enter the City of Veneta as an intervening party to the lawsuit filed by LandWatch against the federal agencies over the Veneta Water Pipeline Project. Sandra Larson seconded the motion which passed with a vote of 5-0.

Ric said Brian will notify legal counsel that the City Council approved the City become an intervening party in the LandWatch suit.

The Council requested notification of the filing of LandWatch's injunction.

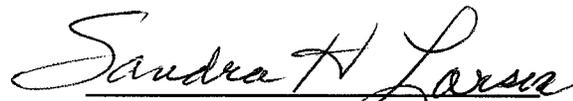
Ric said when he hears something from legal counsel he will pass it on to Council members.

3. OTHER

Ric said he placed a copy of his self evaluation in Council member's mailboxes. He thanked everyone for attending today's meeting.

4. ADJOURN

Mayor Hobart adjourned the Veneta City Council at 4:42 p.m.


Sandra Larson, Council President

ATTEST:



Darci Henneman, Assistant City Recorder
(minutes prepared by Dhenneman)