

REGULAR BUSINESS MEETING
Tuesday February 9, 2021 6:00 P.M.

MEETING CALLED TO ORDER:

Mayor Carlson called the Tuesday, February 9, 2021 Business Meeting to order at 6:00 p.m.

ROLL CALL:

Roll call was taken with the following members of Council and others being present: Councilor Picke, Councilor Carleton, Councilor Baley, Councilor McCollam, Mayor Carlson, and City Recorder Hernandez.

FLAG SALUTE:

The Flag Salute immediately followed with Mayor Carlson asking Councilor Picke to lead.

MAYOR STATEMENT:

Mayor Carlson asked that everyone please turn cell phones on silence. All meetings are recorded. When addressing the City Council, please speak clearly and state your name.

PUBLIC COMMENT:

Mayor Carlson stated the public is invited to provide their comments and opinions to the City Council at this time on issues of concern. Non-emergency issues brought up in this form will not be considered tonight other than in this preliminary discussion, but if found warranted, may be considered at a future meeting of the city council. Public comment is limited to five minutes per person.

Teresa Vaughan (23023 S Merrill Rd): "We just have a concern. Can I give you this?" (Submitted petition)
"We have a concern with the speeders on our road. Um, we are not really so much looking, and we know we are not going to get it fixed. I understand we are not going to get it fixed, but if we could just maybe get a little more of a presence. I will let you read that for a second."

Mayor Carlson read the submitted document for the record:

February 9, 2021

To Whom It May Concern:

We, the undersigned, residents of South Merrill Road, are concerned about the excessive speeds some drivers employ while travelling our street. Many times, they far exceed the posted 35 miles per hour shortly after passing the railroad tracks, heading South. Traffic heading north fails to slow at the posted sign. Speeds at times in excess of 65 mph!

As Spring and Summer are fast approaching, there will be people, including families with children and pets, walking and biking this road for exercise and to get out of the house, a sure cure for cabin fever. The speeding drivers pose a threat to these citizens safety. To date, there have already been 8 pets killed on this road, a horse hit, and a pickup mirror striking the neighbor while retrieving his deceased dog. All we ask is to patrol this road or even sit at the bridge a few times a week, so that the loss does not escalate to people and/or children. Just the presence of a patrol car can slow traffic.

Mayor Carlson stated the topic of patrolling outside of City limits and the policy to allow patrols will be agendized for March 9, 2021 for discussion.

Teresa Vaughan (23023 S Merrill Rd): "I mean, I think, even, is the bridge within City limits?"

Councilor Carleton stated the river is City limits.

Teresa Vaughan (23023 S Merrill Rd): "So, just even sitting there like how you guys sometimes sit at the hotel, even if you sit a couple days at the bridge, just a presence. I mean, it slows them down, and I think we have

that flashing light, now don't we? That speed limit sign you have on the wall that you had on the bumper of your truck that lights up and tells you how fast you are going?"

Marshal Bicknell stated the sign is inactive at the moments.

Teresa Vaughan (23023 S Merrill Rd): "Oh, but that even helps, and a couple times last year I petitioned. Well, I didn't petition, but I pestered the County, and they brought the speed limit sign out, and it made a huge difference on our road."

Marshal Bicknell hopefully thought the County could post the speed sign again.

Teresa Vaughan (23023 S Merrill Rd): "He is. He will bring it out for a couple times, or a couple days in the spring, they said, but even if you guys could stop there a couple days a week or something. If people started getting the idea that it was a speed trap again would be helpful."

Public Works Director Matthews affirmed.

Teresa Vaughan (23023 S Merrill Rd): "Ever since they fixed the tracks. If we can damage the tracks one more time, then that can be our natural speed bump."

Marshal Bicknell stated two financial options to resolve the issue is voluntary annexation into the City or contract with the City of Merrill.

Councilor Carleton stated the Police District could also have the same boundary as the Rural Fire District.

Marshal Bicknell stated the idea as is outstanding.

Councilor Carleton stated the rural areas would then be granted protection because the City will not to be frank.

Teresa Vaughan (23023 S Merrill Rd): "Well, I know. I mean if we were to call 911, and we did have a dire emergency, we know Brian. They would be out there. I understand. I know that and we have almost had a couple... I mean my husband almost got t-boned, Billy Gallagher almost got t-boned, um, yeah. Billy was even... the car that flew up on Billy, he slowed down, and the car went around him, turned around, went down to Stateline, came back into Billy's driveway, spun a donut while he was flipping him off, and then took off. And almost flipped into his ditch when he took off out of the driveway. I mean it's just... I would have loved to get ahold of that one."

Mayor Carlson agendized the potential of extending a district beyond city boundaries.

Councilor Carleton stated forming a new district is extensive to include fire, ambulance, and police taxable to an emergency district. The district would have more funding, allow for more police, and better protection.

Discussion ensued.

Councilor Baley thought Merrill Police Department was jurisdiction one outside City limits.

Marshal Bicknell stated police has jurisdiction throughout the State of Oregon for legal authority, but the responsibility is to the residents of Merrill who pay Merrill Police Department wages. Wages are paid exclusively from property tax.

Discussion ensued regarding traffic ticket revenue and speed signs.

CONSENT AGENDA:

- **Meeting Minutes:**
January 26, 2021 Supplemental Budget and Council Meeting Minutes: Councilor Carleton made a motion to approve the January 26, 2021 Meeting Minutes and entire consent agenda. Councilor Picke 2nd the motion. The motion passed 4-0 in favor.
- **Phone Poll:**
- **Business License Renewals:**
See Attached List: Councilor Picke stated the Business Licenses need to have insurance information on the application even if already on file. The information may have changed. Councilor Carleton stated agreement. *Refer to meeting minutes for motion.*
- **Business Licenses:**
- **Accounts Payable:**
January 2021 Account Payables: *Refer to meeting minutes for motion.*
January 2021 Water Transfer: *Refer to meeting minutes for motion.*

STAFF REPORTS:

- **Police:**
 - Marshal Bicknell submitted a report to City Council. Marshal Bicknell stated no criminal calls have been reported. The City of Merrill have conducted three traffic stops, three outside assists to

other agencies, one disturbance at The Water Hole, and responded to two motor vehicle crashes on Highway 39, which were nonexistent.

One of the outside assists was requested by the Klamath County Sheriff's Office regarding a stolen vehicle travelling through. Officer Srch responded. On Pope Road, the suspect backtracked where Officer Srch attempted to block the suspect's exit from a driveway and inadvertently reversed into a utility pole, which resulted in damage to the right rear of the patrol car. The suspect continued to drive recklessly, and the Klamath County Sheriff's Office terminated the pursuit due to public safety. The Malin Police Department later located the suspect and vehicle in Bonanza. The suspect was taken into custody for the crimes committed and previous warrants. The patrol vehicle was covered by City insurance and is awaiting repairs at Dan's Auto Body. Officer Srch sustained no injuries during the incident.

Marshal Bicknell has been working towards updating the Merrill Police Policy Manual. Marshal Bicknell has one chapter to finish before completion. Marshal Bicknell has been in the process of reestablishing the Crisis Intervention Training (CIT) for April or May, depending upon COVID status.

- **Public Works:**

- Public Works Director Matthews submitted report and read: Checked water lifts; took water and sewer samples; well static level is 72 feet; completed DMR; delivered pink tags and turned off services; performed multiple locates; cleaned restrooms; Utility Worker Taylor and Part-time Laborer Roman Vazquez dismantled the Flag Pole Park restroom, repainted, re-caulked, and installed a new towel dispenser; cleaned shop; fixed a water main break off of Grant Street; met with Oregon Department of Transportation to discuss overall scope on Front Street; built shelves in FireServe room; mailed Recycled Water Report for DEQ; fixed one sewer plug; Metal Masters fixed heater at pump station; completed waiver for Tulelake, CA Public Works to use City of Merrill Public Works certification; and working on Third Street Chip Seal Project. Councilor Baley inquired to the water usage to extinguish the fire from Dan's Auto Body. Public Works Director Matthews stated the well did not drop below 33 feet and the water was used for hours. The pumps worked as designed. The 50,000-gallon tank would have been drained within 30 minutes. Mayor Carlson inquired whether the legacy tank is still operational. Public Works Director stated negative.

- **City Recorder:**

- City Recorder Hernandez submitted report and read: Completed COVID Relief Fund and COVID Relief Fund Risk Assessment Questionnaire; Updated Emergency Action Plan; Updated Oregon Ethics Commission Jurisdiction Contact Information and the Statement of Economic Interest (SEI) notification is upcoming; Continued 2021-2022 Budget; Submitted CIS claim for patrol vehicle; met with Rural Klamath Connects; CIS Human Resource trainings; LOC (Department of Revenue) Lodging Tax Webinar; Performed Public Record Requests, and other administrative duties. Councilor Picke stated changes have been made to transient tax submissions from monthly to quarterly.

- **Lawyer:**

- Report: Mayor Carlson stated the City Attorney was tasked with investigating the notice for the reported encroachment on Fourth Street. City Attorney Jennifer Schade responded that the Water Street Easement was private; therefore, not City business. Mayor Carlson suggested agendizing the maintenance of the Water Street water sewer system.

- **Code Enforcement:**

- Report: No activity to report.

- **Planning:**

- Report: (*Mayor Carlson recused self due to conflict of interest*) President Councilor Carleton stated signing the closing documents for the 1.11 acres on February 9, 2021 with City Council approval. Planning Commission is working with Developer Bill Carlson to install water and sewer

to move forward with development on the 1.11 acres. The remaining acreage is pending until Developer Bill Carlson exercises the option to buy. There are issues with the water and sewer on the 1.11 acres. A Site Plan needs to be submitted to the Planning Commission and is working with Developer Bill Carlson. Discussion regarding fire hydrants in relation to development ensued between Councilor Baley and Council President Carleton. Water and sewer lines will be extended to the north when development arises. All plans will be to code and approved by City Engineer Darryl Anderson.

- Appoint Planning Commissioner: Commissioner Hicks resigned, and Keith Baley submitted a letter of interest. Councilor Carleton made a motion to appoint Keith Baley as a Planning Commissioner. Councilor McCollam 2nd the motion. The motion passed 4-0 in favor.
- 415 N Clay Street Demolition Application: Planning Commission approved 415 N Clay Street Demolition Application.
- 191 W Court Drive Fence Application: Planning Commission approved 191 W Court Drive Fence Application.

PROJECT MERRILL:

LOST RIVER ARTS AND CULTURAL ALLIANCE:

- Report: Public Works Director Matthews reported donating \$500.00 to the Merrill Lions Club Flag Fund and 50 pounds of food to the Klamath County Animal Shelter. Public Works Director Matthews stated the desire to purchase Christmas decorations for businesses to display and to use the Oregon Community Foundation Funds, approximately \$4,000.00, for a mural on the Butcher Shop wall. The Lost River Bluegrass Festival has eight bands contracted. The event will be held July 9, 10, and 11, 2021.

NEW BUSINESS:

OLD BUSINESS:

- Enforcement of Conditions of Approval for Merrill Solar: The Conditions of Approval were emailed to the City Attorney. Councilor Carleton stated on March 15, 2021 the solar company will begin installing slats in the fence. The slats will be 6 feet in height. The letter with the appropriate water agency is non-compliant. Signed documentation between the solar company and water authority must be submitted to maintain Water Rights. Water not used in five years results in the permanent loss of Water Rights and the lifetime of a solar plant is 10 years. In the event the solar plant is decommissioned, and the land reverts to farmland, without the Water Rights, the property is valueless. Discussion of fines ensued. Mayor Carlson suggested tracking the legal funds in addition to the \$1,000.00 fine for enforcement. Councilor Picke made a motion to utilize City Attorney Jennifer Schade to pursue fines for non-performance of Conditions of Approval including the \$1,000.00 fine plus legal expenses. Councilor McCollam 2nd the motion. The motion passed 4-0 in favor.
- Merrill Commercial Update: *Mayor Carlson recused self due to conflict of interest.* The Planning Commission held a meeting February 8, 2021 to discuss Merrill Commercial. The layout to commence development was addressed. Water and sewer must be available, and a detailed Site Plan layout submitted for the 1.11 acres. The remaining acreage is on hold until purchased. Broker Margaret Moore read resignation letter dated Tuesday, February 9, 2021:

Dear City of Merrill:

As you know, the first part of this transaction is ready to close. However, the 2nd part has become much more complicated and I do not feel that I can continue with my representation of either the Buyer or Seller and comply with my obligations under Oregon Real Estate Law. Therefore, once the first part is completed, I will no longer act as the Broker for either the City of Merrill or Mr. Carlson. I suggest you each get independent representation. I will waive any claim to a commission on the 2nd part of the transaction and will be cancelling the listing agreement for that portion of the transaction.

Respectfully,

Margaret Moore
Margaret Moore,
Oregon Licensed Real Estate Broker
Fisher Nicholson Realty, LLC
403 Main Street
Klamath Falls, OR 97601
Office: 541-884-1717
Cell: 541-238-4438

Public Works Director Matthews stated regret for Broker Margaret Moore's resignation. Councilor Picke inquired whether the second portion of the transaction purchase was contracted. Broker Margaret Moore affirmed. The first purchase transaction is scheduled to close escrow and be recorded. Developer Bill Carlson has signed, and Council President Carleton will sign February 10, 2021 and tentatively be recorded February 10, 2021 or Wednesday (*sic*) without unforeseen complications. The purchase transaction became complicated on the 1.11 acres, and the second purchase transaction is already complicated and will continue throughout. Broker Margaret Moore counselled with Fisher Nicholson Realty, LLC Attorney and Principal Broker, which resulted in Broker Margaret Moore's resignation and cancellation of the listing due to complications and suggested separate representation for the City of Merrill and Developer Bill Carlson.

Developer Bill Carlson stated, "putting people in a bad spot" and the difficulties of one person representing both parties. Developer Bill Carlson stated Broker Margaret Moore has balance the responsibility well. Separate representation is cleaner.

Resident Gary Robeson inquired whether there was any unlawful violation or rule in the situation. Council President Carleton stated, "I do not know is the honest answer. There's some shady areas is the best way to put it, but as far as I know, no laws been broken or anything. I do not know of any investigating going on or anything."

Developer Bill Carlson asked to speak to Resident Gary Robeson and Council President Carleton's comment and inquiry. Permission was granted. "There were two contracts. One was incorporated into the other. One was the original, and one was induced by me, an option contract. Margaret did (*inaudible due to cough*) contract with that, there was some inconsistencies, and that has led to some confusion, uh, and we can straighten that out. But it has to do with multiple pur...early purchases or do I have to do it all at once with the second parcel?"

Council President Carleton inquired to the specific question.

Developer Bill Carlson stated, "In my opinion, I can say buy two acres next week, there's another part of the contract that says, 'No. You can't do that'. You have to buy all four acres at once. So, there's that dichotomy in there, and it would be cleaner if there's that opposite representation. We can work through that."

Councilor Picke sought clarification of whether the second portion of the contract "needs to be sorted out". Council President Carleton affirmed. The interpretation of the contract is after the initial purchase, which is 1.11 acres, the balance of the property must be purchased before proceeding further. Approximately four acres.

Developer Bill Carlson stated, "I could assert I could buy two acres. The other part of the contract says, 'No. I have to buy all four', and I think that's the biggest...."

Councilor Picke inquired whether the City of Merrill must retain a new Real Estate Agent or City Attorney Jennifer Schade.

Broker Margaret Moore stated another Broker or Attorney.

Developer Bill Carlson encouraged the City of Merrill to have City Attorney Jennifer Schade review the transaction, as a participant.

Council President Carleton stated obtaining a new Real Estate Agent to complete the balance of the property, relist the property, and so forth.

Public Works Director Matthews stated the City of Merrill owes Broker Margaret Moore "a big thank you for all the work she has done".

Broker Margaret Moore submitted a Change Form cancelling the listing for Council President Carleton to sign. The scheduled date for cancellation is Friday, February 12, 2021 to allow the first transaction to close. Discussion of pursuing a new Real Estate Agent ensued. Agendized.

- Easement Update:

Gary Robeson (405 Water Street): "Yeah. I submitted some additional information today as I understood (inaudible) until the next meeting. What I submitted today was a question or position that in the 9-11-2018 City Council Meeting where I brought up a report on September 4, 2018 about the maintenance, and the sewer, and the lift station, and the roadway and so forth. Page three of the minutes of 9-11-2018 City Council Meeting it was discussed that the road was being maintained by the public works as well as the lift station, and I saw that, and that basically solves the issue to the question about how that is going to go forth, and I wouldn't be liable for those things or any of the other people. (Inaudible) and use the roadway, and then the Land Partition 37-97 and 56-97 are joined making one circular driveway. And so you would gravel it when needed and (inaudible) gravel it as was the Scronce's duty and their heirs to maintain (inaudible) on the roadway and to deal with the sewer lift station. And I pointed out that when I bought the property from Larry Grave, he said, 'that lift station, you know, Sconce tried to sell it to me and if he tries to don't do it'. And I got a building permit in 2007 to build my house and that that building permit (inaudible) with Stan Hinton I asked him what is the deal with these (inaudible). Stan said, 'against my recommendation, Joe Scronce got the City to take over the lift station and the roadway', and so I had him explain that to me. I said, 'alright, I am fine with that I just want to make sure what the facts are'. So, subsequent to that, there was an overflow at the lift station in 2018 or maybe '17 in the hopes that it came about the lift station that the question presented to me or a statement made to me that lead me to believe that I was told that I own the lift station. I said that I wanted to speak with them. So, we looked at the easement issue in our neighborhood right out, and question of the two-foot setback, but simply the 20 foot easement that exists from the land partition 56-97 back up to the now abandoned West Water Street." Councilor Carleton inquired who gave the easement.

Gary Robeson (405 Water Street): "Ted Roller."

Councilor Carleton inquired to whom.

Gary Robeson (405 Water Street): "As a requirement to..."

Councilor Carleton inquired to whom was the easement granted to.

Gary Robeson (405 Water Street): "The question."

Councilor Carleton inquired whom Ted Roller granted the easement to.

Gary Robeson (405 Water Street): "The City. It was required by the City."

Councilor Carleton inquired whom the easement was granted to.

Gary Robeson (405 Water Street): "That's what I answered your question. Asked and answered."

Councilor Carleton asked that the easement was granted to the City?

Gary Robeson (405 Water Street): "It was required by the City that it be there, and who did he give it too? Public records. It was a non-exclusive easement. It belonged to the City for the egress and...entrance and egress of the utilities is my position."

Councilor Carleton reiterated the question that the easement was given to the City?

Gary Robeson (405 Water Street): "It was required by the City."

Councilor Carleton stated the requirement is acceptable. The City has no property at the discussed location.

Gary Robeson (405 Water Street): "The City took it over by agreement. Ill advised, but they did, and that is why the electrical bill is paid by the City for the lift station. That's the reason why Greg Matthew's looked at me and said, 'Gary, we have been taking care of this road and lift station for 18 years and it is our intent and to do so for that period of time'."

Public Works Director Matthews stated that was not an admission. Public Works Director Matthews stated the City has no ownership.

Gary Robeson (405 Water Street): "It's not a matter of that. Okay. (Inaudible) maintain the roads."

(Councilor Picke read the quote from September 9, 2018 Meeting Minutes stating the City does not own the lift station).

Public Works Director Matthews stated maintaining the roads.

Gary Robeson (405 Water Street): "Yeah, and I have no problem with that."

Public Works Director Matthews inquired to the issue.

Gary Robeson (405 Water Street): "I am talking about the easement is 20 feet wide and they put a container within that 20 feet. All I am asking the City to do..."

Public Works Director Matthews stated the easement has no bearing on the lift station. Public Works Director Matthews stated performing job duty. Public Works Director Matthews sought clarification from Resident Gary Robeson of his opinion that he does not own the lift station.

Gary Robeson (405 Water Street): "No. I don't own it either."

Public Works Director Matthews stated the City can retain an attorney and rescind the agreement to maintain the road and lift station. The residents can start paying the power bill.

Gary Robeson (405 Water Street): "I wouldn't accept it. You can take whatever approach you want."

Public Works Director Matthews stated Resident Gary Robeson is complaining about a non-issue.

Gary Robeson (405 Water Street): "I will remove my gripe."

Public Works Director Matthews stated please do.

Gary Robeson (405 Water Street): "I rescind it."

- Discuss Fourth Street Encroachment: City Recorder will submit previous letter mailed to Washington Federal to City Attorney Jennifer Schade to place on attorney's legal letterhead.
- FEMA Status Report and Potential Request for Information: Elevation information was gathered for FEMA to run a test model. FEMA may run the model. FEMA placed the majority of City of Merrill within the flood zone, which would devastate property values. Mark Miller has identified elevation busts such as Anderson Rose Damn removing 99% of the City from flood hazards. The water sewer plant remains in the flood zone. The question was posed. How much money does the City want to spend to provide data to FEMA to remove the entire City from hazard zones? Councilor Carleton discussed historical floods.

ORDINANCES:

- Bill 2029-Amending Development Code Chapter 2.2.400 (B) Residential Districts-Special Use Standards; Agricultural Uses: City Recorder read Bill 2029 into the record for the second reading with changes reflecting only the amendments. Councilor Picke made a motion to approve Bill 2029 with the amendment of 3 (C) Roosters are prohibited to 3 (C) One rooster per flock for children participating in Future Farmers of America (FFA) or 4-H, and the addition of the word "any" before receptacle on line item four. Councilor Carleton 2nd the motion. The motion passed 4-0 in favor.
- Bill 2030-Amending Chapter 155.022 (3) Residential Zone; Merrill Land Use: City Recorder read Bill 2030 into the record for the second reading with changes reflecting only the amendments. Councilor Picke made a motion to approve Bill 2030 with the addition of 3 (C) One rooster per flock for children participating in Future Farmers of America (FFA) or 4-H, and the addition of the word "any" before receptacle on line item four to reflect Bill 2029. Councilor Carleton 2nd the motion. The motion passed 4-0 in favor. City Recorder read Bill 2030 into the record and sought recommendations on the first reading. City Attorney Schade suggested defining bee colony. The action item was made for Planning Commission to define bee colony for the Code of Ordinances. City Council agreed to the first reading.
- Bill 2031-Amending Development Code 5.2.300-Non-Conforming Developments (B) Destruction; Non-Conforming Uses and Developments: City Recorder read Bill 2031 into the record for the second reading. City Recorder Hernandez stated the verbiage is from Klamath County Code. Councilor Picke made a motion to approve Bill 2031. Councilor Carleton 2nd the motion. The motion passed 4-0 in favor.
- Bill 2033-Amending Development Code Chapter 2.2.230 Residential District Building Orientation B (2) Building Orientation Standards for all Development: City Recorder read Bill 2033 into the record for the second reading. Councilor Picke made a motion to approve Bill 2031. Councilor Carleton 2nd the motion. The motion passed 4-0 in favor.
- Bill 2034-Amending Development Code Chapter 2.2.230 Residential Districts-Building Orientation Standards for Site Design Review C (1); b (4): City Recorder read Bill 2034 into the record for the second reading with changes reflecting only the amendments. Councilor Carleton made a motion to approve Bill 2034. Councilor McCollam 2nd the motion. The motion passed 4-0 in favor.
- Bill 2035-Amending Development Code Chapter 2.2.300 Residential Districts-Architectural Design Standards Design Standards C (3): City Recorder read Bill 2029 into the record for the second reading with changes reflecting only the amendments. Councilor Picke made a motion to approve Bill 2035. Councilor Carleton 2nd the motion. The motion passed 4-0 in favor.
- Bill 2040-Amending Development Code Chapter 1.3.300 Definitions- City Recorder read Bill 2029 into the record for the first reading. A definition for nucleus hive is to be added to the amendment. City Council agreed to the first reading.

RESOLUTIONS:

OTHER-FUTURE AGENDAS:

- Police Patrols Outside City Limits

- Obtain Real Estate Agent or Real Estate Lawyer
- Discuss Fire Rating

PUBLIC COMMENT:

The public is invited to provide their comment and opinion to the City Council at this time on issues of their concern. Non-emergency issues brought up in this forum will not be considered tonight other than in this preliminary discussion, but if found to be warranted, may be considered at a future meeting of the City Council. Public comment is limited to 5 minutes per person.

No public comment followed.

ADJOURN MEETING:

Councilor Carleton made a motion to adjourn the February 9, 2021 Meeting. Councilor Picke 2nd the motion. With all in favor, the meeting adjourned at 7:16 p.m.

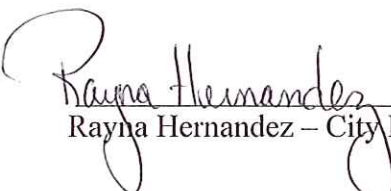
Respectfully Submitted,



Bill Carlson - Mayor

08mxx21

Date



Rayna Hernandez - City Recorder Date