## CITY OF ELGIN SPECIAL SESSION MINUTES FOR MARCH 14, 2015

#### **COUNCILORS PRESENT -**

Name:	Present:	Name:	Present:
Mayor Alan Duffy	Yes	Councilor Brent Linville	Yes
Councilor Michelle Miles	Yes	Councilor Kathy Warren	Yes
Councilor Teresa Shaffer	Yes	Councilor Jeremy Richards	Yes
Councilor Rocky Burgess	Excused	Student Councilor Lena Johnson	Yes

### Call to Order

The meeting was called to order at 7:00 PM by Mayor Duffy with the salute to the flag.

#### Roll Call

Mayor Duffy requested roll call. Councilor Miles, Councilor Shaffer; Councilor Warren, Councilor Richards, Councilor Linville, Councilor Johnson, all responded present.

### Planning Commission Resignation

Eileen Larkin submitted a letter of resignation from the Planning Commission citing medical reasons. Councilor Warren moved to accept the resignation of Eileen Larkin. Councilor Linville as Second.

Roll Call Vote: Councilor Miles – Aye, Councilor Shaffer – Aye, Councilor Warren – Aye, Councilor Richards -- Aye, Councilor Linville – Aye, Mayor Duffy – Aye. Motion Carried.

# Accusations of Appointed City Official Personnel

Mayor Duffy stated two grievance letters were received from Public Works. City Attorney Wyatt Baum and Richard Mackie were present. Mayor Duffy asked if all Councilors had read the grievances. All answered in the affirmative. Councilor Miles recused herself from this discussion and left the room. Mayor Duffy asked for any questions from the Council regarding the grievances submitted, hearing none, invited Richard Mackie to come forward to speak.

Richard Mackie stated this is part of the deal where he calls it how it is. When he was assisting his neighbor. Terry Olsen, two gentlemen came over who work for the City. He did not know who they were. They came in a City vehicle. They looked at a piece of paper and stopped. Mr. Mackie figured they were doing the markings for Terry's satellite dish. The men came over to a fire hydrant; said water must be down there somewhere. Mr. Mackie couldn't figure out what they were doing, looked like they were sizing up where the hydrants were. He asked what they were doing. They responded they had a request from USA Dig for a satellite dish. Mr. Mackie told them they were not over the water line and asked them where was their map, where is the proper equipment to mark or find the water line. There was no response. He then asked if one of them was the summer help and was told yes. He then asked since when did the summer help get hired. The City had the OK to look for help, but nobody knows that anyone hired summer help. He then told them he would be talking with Dan or the City Administrator. Then this came about. No job was threatened whatsoever. The City is doing the same crap as doing before. The City gets a little bit of rope and they hang themselves. The hiring committee was so happy about certifications. They hired this guy, didn't tell him now that he's got the job he has to move to Elgin; he lives in Imbler and travels back and forth. The Council did not know summer help was

hired. This is the kind of crap we're dealing with. We just hired two people that have no concept of how to deal with the public at all. Dan is so afraid of me, because I intimidate him so much. Dan drove by there the other day before. All the two gentlemen had to do was to walk over to dish and write ok, instead of marking paint lines over a natural gas line. I know that natural gas line is there because I put mine in, neighbor had there's disconnected and that is where their main line runs. Mr. Mackie stated he really doesn't care if he is dismissed or not. He was trying to help the City, they were shorthanded. He doesn't have a problem helping the City. But why are we hiring people who can't do their job or follow through to finish a complete job. Why do we have a Super who isn't doing the markings out there, but puts the two newest guys on it. They have no concept. They were totally lost; they didn't even have a map in the vehicle. As far as threatening, Mr. Mackie stated he had two witnesses that will vouch he did not threaten any job.

Mayor Duffy asked for questions from the Council. There were no questions.

Mayor Duffy invited Toni Olsen to come forward and state her name for the record Toni Olsen came forward as a witness. Ms. Olsen stated on March 6<sup>th</sup> Tyler Crook came to mark a water line. Michael Short was with him. In Tyler's statement he says that the contractor was on the roof, not sure where he got the idea he was a contractor. Councilor Shaffer asked for clarification. Ms Olsen stated the statement submitted by Mr. Crook said Richard Mackie, the contractor, was on the roof. He is not a contractor; two guys were helping with the roof as Mr. Olsen has health problems. Richard Mackie did ask about marking lines. Ms. Olsen was standing in the street with another neighbor; one kid went down the fence towards the neighbors. Ms. Olsen asked where are you going, the meter isn't over there it's in the front yard, and he, whatever. Richard Mackie did question them about seasonal work. No, he did not threaten them. Why they would feel threatened I don't know. I do wonder why it takes two people to mark a water line. Mayor Duffy asked for any questions from the Council. Councilor Warren stated the Council did approve the hiring of summer help before hiring Mr. Crook.

Mayor Duffy invited Shirley Keating to come forward and state her name for the record. Ms. Keating stated she was standing in the street when this happened. She didn't know why they thought they were threatened. They were questioned why they were putting lines and then they left. He didn't threaten their job. Ms. Keating further stated she didn't understand why it came to this. Mayor Duffy stated when a grievance is filed, the Council is called together; none of us want to be here, but rules have to be followed. Ms. Keating stated her grandson was on the roof, and that is why she was watching what happened. Mayor Duffy asked for any questions from the Council. Councilor Warren then read from the statement submitted by Mr. Crook citing the reason for feeling threatened.

Mayor Duffy then asked if Mr. Mackie had a response. Mr. Mackie responded he would like to rebut the comment made by Mr. Crook in his statement. Mr. Mackie admitted he did ask about May, but the comment quoted was made by one of the guys on the roof and not by Mr. Mackie.

Mayor Duffy then asked the Council for input.

Councilor Richards asked how long Mr. Mackie had been on the Planning Commission. Mr. Richard Mackie responded he had been appointed a few weeks ago, but had been on the Planning Commission in the past.

Mr. Richard Mackie went on to say: I do know the markings up in that area. I know where those markings are. I know where the City mains are, the City shut offs, the natural gas shut offs. They replaced my hydrant after piling snow on it with a front end loader. In my neighborhood it's not a really good place to come up there and guess at something. When I worked with different contractors. I use those marks. I maintain those marks, and those marks are there for a reason. You just don't go up there and paint some lines because you think it's there, those marks are very important. If I took my tractor over there and dig where he marked, I would hit the natural gas line. We have people working for the City who have no concept of what they are doing. Councilor Shaffer stated she doesn't agree that employees have no concept, but if she was going to do a job and he was there, he can be intimidating. You know that, I have known you my whole life. Richard Mackie responded he is very authoritative. Councilor Shaffer went on to say: I think somebody who doesn't know you, is going to be intimated by you whether you mean it that way or not. Richard Mackie responded: There's where your employees need to learn to deal with the public. If they can't deal with the public, they shouldn't be in that position. When I am on the road, I spend hours in meetings with tenants, owners and state officials and don't have this problem. Everybody knows how to deal with each other. You just don't walk away from it and then go behind someone's back and do this. Councilor Shaffer responded she was not there and only has his word against theirs. Councilor Linville stated when there are new hires that aren't used to the City, they are getting used to everything, someone who comes up with authoritive voice and gets down on them, I mean if they're following what they should be following, they should back off and let the supervisor handle it. Richard Mackie agreed Dan should have been sent. Administrator Eckstein stated Dan was gone for training. Councilor Shaffer stated Dan sent the crew to do a job. He is their supervisor and has the right to tell them to do what needs to be done. Richard Mackie responded they need to step up and find out more information before they are given the job. They should have been given a map and a locate device, there was neither, all they had was a piece of paper with an address.

Councilor Linville asked if he was trying to tell the Public Works director how he should train his staff. Is that what you are saying? Richard Mackie responded the City has a Public Works director who isn't trained to do his job. Otherwise this wouldn't have been an issue. This would have been handed off and done. Councilor Linville stated the point he is having a problem with now is reason that I voted no when he was up to be appointed to the Planning Commission, he has an authoritative type voice, he means well in the things he does, but the manner/customer relations you need to have, especially if a public official is not quite what I would expect to see and by that it can come across wrong to people, not that he means to come across wrong, that is how it can come across wrong, I can see potential problems with that.

Mayor Duffy asked what the resolution to this is. Councilor Richards stated he had only met Richard Mackie a few times, but he comes across as a very strong personality, nothing wrong with that, but there is something to be learned from that. Councilor Richards' feeling is a public official is also an ambassador of Public Works, of the City, the Council, and everything there within it. Richard Mackie responded when you don't have authoritative people all you get is passive people that beat around the bush. I don't beat around the bush and that's why my jobs go smooth and people call me in when it goes to hell to fix it. I don't put up with stuff; plain and simple. Councilor Linville stated in this world we need to be more and more PC (Politically Correct) to keep out of litigation with things that is his biggest concern. Richard Mackie

responded his concern is that the City has people on there to start writing them up when they mess so we have an opportunity to dismiss them when they need to be dismissed. Councilor Richards responded first step is to help them to learn it properly so we don't have to be on the lookout all the time.

Richard Mackie responded: Exactly, but need someone who knows what they are doing first. Councilor Richards stated: When you saw that it was being done incorrectly, with the knowledge you have, it would have been more constructive to step in in a different fashion and offer your service and your knowledge rather than putting them on the defense to the point they felt threatened. Richard Mackie's response was: They didn't want to answer a simple question. Someone sits there and goes "Who are you? I don't have to talk to you" right off the get-go. I am gonna keep asking questions till I get answers. Tyler, he was hired on the spot. Council gave the hiring committee to hire someone if they see fit. But they were so happy they forgot the rest of the information they were supposed to give him about moving to Elgin. The other gentleman, Short, was supposed to be summer help. Summer help normally does not start till May. I understand that Dan has been shorthanded, there is still money in the budget, but there should have been a few phone calls made. Can we pick this quy up; simple fact can use him right now. But nobody knew that he was even hired, no one knew other than Brock and Dan. Administrator Eckstein responded the Public Works committee interviewed and hired him. Richard Mackie asked who interviewed Mr. Short. Administrator Eckstein responded Public Works committee, himself and Dan. Richard Mackie asked if anybody knew they were meeting for an interview. Mayor Duffy responded that hiring is off point; the Council is addressing the complaint itself. He went on to ask how the Council proposed to resolve the grievance. Richard Mackie stated if he is dismissed, this is not a threat; it just makes it a lot easier to do what he needs to do. As a public citizen holding nothing, he can say and do what he wants and still not be held accountable by the City statutes. What he did wasn't near what the secretary did here in a previous Council meeting to him -- nowhere close. There are a lot of other instances that I can bring up, I can file paperwork on it, and it's all City record. You guys are gonna set the precedence tonight. Councilor Linville stated if precedence is set, in his view, if he can't act in a civil manner with people where they don't feel threatened from him, then the City doesn't need him as public official. Councilor Warren asked if that would include Planning Commission and Budget Committee. The answer was yes. Councilor Linville stated there are ways to teach and ways help to move the City forward in a positive manner. If the Council is getting complaints, this is not a positive step forward. If the Council is always bucking this, then he would have to say we need to end the problem. Richard Mackie responded: I think you need to go back to the guys and say you need to buck up, suck it up, and forget about it, make it go away and then proceed with training for these guys.

Councilor Warren asked the legal opinion of the City's attorney, Mr. Baum. Mr. Baum responded the issue before the Council is whether or not weighing evidence presented and then decide whether or not to continue on with the way things are going right now with Mr. Mackie on the Planning Commission or remove him, and that is at the discretion of the Council

Councilor Linville asked how he would be, stated he is gonna be slightly authorative, not what we need, I say I would move to remove him. Councilor Linville then made a motion to remove Richard Mackie from the Planning Commission and the Budget Committee. Councilor Richards as Second.

Roll Call Vote: Councilor Miles – recused; Councilor Shaffer – Aye, Councilor Warren – Aye, Councilor Richards -- Aye, Councilor Linville – Aye, Mayor Duffy – Nay. Motion Passed.

Councilor Miles rejoined the meeting at this time.

## Foster Group vs. City of Elgin (27:36)

City attorney Wyatt Baum was present to update the Council on the Foster case. Mayor Duffy, Administrator Eckstein, Councilor Linville, Councilor Shaffer and the City attorney representing the City and John Stouffer from CIS, Richard Kuhn, attorney for City. The Fosters were represented by Anna Foster. Judge Dretke put the Fosters in one room and the City in another.

There are 3 remaining claims against the City. There is no insurance coverage for the inverse condemnation claim that where the Fosters say the City stole property from them. Under Oregon law they don't have the right to get those pieces of property back, but they can get monetary damages if it goes to trial and attorney fees.

Judge Dretke didn't think negotiations would be successful and was not sure the City would win on the two covered claims. Under Oregon ethics rules, even though one claim is uncovered, legal defense still has to defend that for the City. The important part is CIS was ready to move forward with a summary motion stating there is no genuine issue to discuss and the City wins on all matters. If it goes to trial, even though CIS will pay legal coverage, they will not pay damages or attorney fees if Fosters win. The real danger comes down to how much is the piece of property worth. Through settlement negotiations, Foster group were valuing each lot at \$17,000 each. Our experts were at about \$7,000 each. The Foster's wanted to settle for \$85,000 and CIS wanted to settle for \$10,000. Two other parts of the settlement which fosters file for a variance for the setback or the City assist in the process of legalizing the two road ways. It is likely to happen anyway for one of them Fire code purposes. Those are the non-monetary settlement proposals. However Fosters wanted \$85,000 for their loss. Mr. Stauffer offered \$10,000 not going above \$15,000 not covering the bill for settlement; that would all be on the City.

After 3.5 hours of negotiating got it to \$35,000 which was initially accept by Fosters. When they went to finalize, Fosters requested additional \$15,000 apart from what the insurance was going to pay. CIS was not willing to go higher than \$35,000. It was suggested to give 3% discount every month on utilities until paid off but that was not gonna fly as it would be problematic. In the end it came to \$60 flat rate discount every month until \$15,000 was paid or Fosters sell the property. The proposal on the table is Fosters drop the case against the City if CIS pays \$35,000, City allows for variance application process on Beverly Terrace, and City gives \$60 discount monthly on the water/sewer bill until \$15,000 paid. A benefit is no interest on the \$15,000. This allows a way for the City to settle and close this chapter of history. From a legal standpoint, it seemed likely there would be some exposure for the City at trial. Judge Dretke didn't dislike the claim; there was some ambiguity for the inverse compensation claim.

Mayor Duffy asked for questions from the Council. Hearing none, the Mayor stated he would entertain a motion. Councilor Shaffer moved to accept the settlement offer with the Foster Group of \$15,000 to be paid at \$60 a month off their Water/Sewer bill. Councilor Warren as Second.

Roll Call Vote: Councilor Miles – Aye; Councilor Shaffer – Aye, Councilor Warren – Aye, Councilor Richards -- Aye, Councilor Linville – Aye, Mayor Duffy – Aye with reservations. Motion Carried.

Resolution 1349 (2015) Amendment to the Grande Ronde Enterprise Zone With no discussion, Councilor Warren read the resolution in full and moved to accept the Resolution. Councilor Linville as Second.

Roll Call Vote: Councilor Miles – Aye; Councilor Shaffer – Aye, , Councilor Warren – Aye, Councilor Richards -- Aye, Councilor Linville – Aye, Mayor Duffy – Aye. Motion Carried.

Councilor Linville moved to adjourn. Councilor Warren as Second. The vote was unanimous for approval. Motion Carried.

Minutes respectfully submitted;

Theresa Chandler Clerk/ Receptionist