

City of Creswell
Special City Council
Meeting Minutes
December 17, 2012

Council Present:

Mike Anderson	Jacob Daniels
Jack Gradle	Jean McKittrick
A.J. O'Connell	Jane Vincent

Staff Present:

Roberta Tharp	City Recorder
Layli Nichols	Finance Director
Ross Williamson	City Attorney
Steve Dobrinich	RARE Intern

Council Absent: 0

Press: 1

Audience: 3

The Special City Council meeting was called to order by Council President Mike Anderson at 2:30 PM and the Pledge of Allegiance given.

During the recertification process for Tree City USA it was determined the formal proclamation presentation had not occurred yet this year. Steve Dobrinich had read a semi presentation at the annual Earth Day Celebration but would like the proclamation read in its entirety and approved by the Council in order to complete our documentation for Tree City USA recertification. The council granted consensus to Mike Anderson to amend the agenda to add the Arbor Day Proclamation.

Mike Anderson read the Arbor Day Proclamation.

A.J. O'Connell moved Jane Vincent seconded to accept the Arbor Day Proclamation. Voted on and carried unanimously.

Presentations

Mike Anderson said today's meeting was scheduled to discuss a construction issue regarding the new city hall building. A few years ago, Essex Construction built the shell for City Hall and finished the first floor. Since that time the city has gone out to bid for the second floor improvements and hired Thelander Smith Construction to finish the Council Chambers/Court Room. During the on-going construction of the second floor improvements, it has been discovered that the exterior paint on the west and south facing walls in the rear of the building appears to have failed. During the storm last week it was also discovered the two large windows upstairs on the west wall have begun to leak and are causing some damage. Ms. Nichols handed out the correspondence she has received from various parties including: a Cost Breakdown from Thelander Smith Construction for the window replacement, recommendations from Lane County Glass and McKenzie Glass, Architect Ken Nagao's recommended actions, and a proposal from Walter Bell Construction.

Layli Nichols introduced Shawn Smith of Thelander Smith Construction who addressed the Council to present his construction cost breakdown for replacing the two leaky windows on the second floor. Mr. Smith said as owner of his own company, he is able to keep his overhead at a minimal where other large companies hire specialized employees. Mr. Smith went on to explain the challenges they would face with this dilemma and how it will cause an overall delay in the completion of the 2nd Floor Improvements project. Councilor Vincent asked Mr. Smith why their company didn't want to take on this job and Mr. Smith responded liability, it is a water leak above the server room. Mr. Smith said if they were to take this job, they would start over completely by removing the existing windows from the building and replacing them with windows recommended by Lane County Glass and McKenzie Glass.

Councilor Daniels asked if Essex Construction had been notified about this issue and Ms. Nichols responded that Mr. Shives and the city attorney have been corresponding with Essex Construction in regards to the paint issue but she is unaware if they have spoken about the windows. Ms. Nichols went

on to say that after the council meeting on December 10th, she, Ken Nagao, Shawn Smith, Roy Sprout, and Building Inspector Shawn Eaton met upstairs to try to find a possible solution to fix the problem. Directly after the meeting she spoke to city attorney Ken Jones to have him contact Essex Construction. Councilor Daniels asked Ms. Nichols how long have we known about the leak and Ms. Nichols responded we have been mitigating the paint issue for sometime, and the windows were identified as a problem either at the walkthrough or the warranty walkthrough where Essex Construction came back and did some repair work on the windows to seal them. At that point the windows were repaired and it wasn't until it started storming recently that we started having problems again. Ms. Nichols reported this morning the water was beading down the inside of the window.

Architect Ken Nagao addressed the council to report he has researched his old files and has some recollection of a punch list with a window issue on it. He said he remembers during a walkthrough asking Essex Construction to put a little eyebrow flashing over the top of the windows due to a water problem. Mr. Nagao went on to say the warranty is long past due now and recommended the city contact Essex Construction and ask them to solve the issue before we try anything else. Mr. Nagao went on to explain the window installation procedure and stated he feels it is a sealant problem as the water looks like it is coming through the joints between the glass and the frame. It is the recommendation of Mr. Nagao to work with the glazer.

A discussion ensued regarding the location of the windows and the possibility of doing away with them altogether. Mr. Nagao said the windows were placed there for light control and the building was designed for future expansion should the city ever acquire the fire department property next door.

Councilor Vincent asked how much damage has the leak done to the downstairs and Ms. Nichols responded the only thing discovered so far is a little moisture that has dripped down an exterior wall in the server room. Mr. Nagao said the overflow drain was redone on that corner of the building recently and that could possibly be the culprit of the problem. Mr. Smith said he was on the roof of the building this morning and checked the overflow drain and it isn't the problem. Ms. Nichols noted there is a moisture stain on the new ceiling tile upstairs.

Councilor Vincent suggested having a whole building inspection. Councilor O'Connell asked when the damage would become catastrophic should the council decide not to take any action. Mr. Smith responded by saying "water leaks don't typically get better and this was first noticed in November." Mr. Nagao reported that the overflow drains in the roof have recently been raised by two inches above the low point which is compliant with the code and means the roof has to flood two inches before the overflow drains take over. He is thinking there must be a hole in the roofing membrane. Mr. Smith said he thinks it is in the pan or near the pan.

Ms. Nichols reported Roy Sprout had Walter Bell Construction inspect the windows and provide a second opinion and proposal. They recommended the windows be removed and a well be installed under them in order to redirect the water to the outside of the building should they leak again. Their bid to remove and replace the windows is \$9,650.00; very comparable to Thelander Smiths bid of \$9,900.00. Ms. Nichols continued by saying no matter what the council chooses to do; the city will be addressing Essex Construction with a construction defect claim.

Mr. Smith in response to Councilor O'Connell's question explained, should the council choose to do nothing to repair the leak, Thelander Smith would finish their job and would not warranty the work as the window will continue to leak. Councilor Daniels asked Ms. Nichols if she would provide him with a copy of the Thelander Smith contract.

Councilor Anderson asked Mr. Nagao what sort of timeline we would be looking at to get someone to reseal the stops. Mr. Nagao reiterated his recommendation of removing the stops and the glass; reseal the perimeter and the stops and feels it should take care of all the leaks around the window.

A discussion ensued regarding the costs to the city for fixing the window and then filing a construction defect claim against Essex Construction. Councilor Daniels suggested we notify Essex Construction first and ask them to come in and fix the windows. The discussion continued regarding the paint issues and Mr. Nagao said Essex has been dragging their feet in proposing a solution. Councilor Vincent said maybe we should conduct an overall building inspection before we approach Essex Construction. Councilor

Daniels said we need to stop the leaks but we also need to address Essex Construction as problems may arise in the future and feels an inspection should be in order.

Councilor Gradle commented this is Oregon and with water leakage it could turn into mold problems and we don't want that.

Public Comment -

Jacob Daniels addressed the council to speak as a private citizen. Mr. Daniels recognized Councilor Gradle for his service to his community as a councilor and his military service to his country. This is Mr. Gradle's last meeting as a City Councilor.

At 3:14 p.m. Council President Mike Anderson called for a brief recess to be taken in order for the Council to view the construction site.

Mike Anderson reconvened the Special City Council Meeting at 3:30 p.m.

City Administration

Mike Anderson asked each councilor to provide their thoughts. Councilor O'Connell said he would like to go last. Councilor Gradle stated we should do the repairs as it will only get worse. Councilor Vincent commented that there is definitely a problem and the windows need to be fixed. She also stated she would like to have the building inspected to determine if there are other problems that Essex should fix. Ms. Nichols said she is not sure that Thelander Smith will finish their job until the window issue has been addressed. If the council chooses to move forward without repairing the windows, we would need to alter a portion of the Thelander Smith contract so they are not responsible for the water damage. Councilor Daniels said he would like to see an immediate make shift ceiling put up to stop the rain from coming in and contact Essex Construction to see if they will fix the leaky windows within a set timeframe. If Essex is unwilling to work with the city, we will have to work with Thelander Smith Construction for the repairs. He went on to say he would like to see the city get a third party inspection of the building in order to protect everyone and look at the liability from all different angles.

Ms. Nichols said she likes the idea of contacting Essex Construction but we need to put a timeframe on the response time. She noted it was very difficult to get them to respond to the paint issue but with a time line this should help Thelander Smith know precisely how long their delay might be. Councilor McKittrick agreed, we need to stop the leaks, provide Essex Construction a two week period to repair the windows and if they fail to meet the time period set, have Thelander Smith remove and install the proper windows. Councilor Daniels added he thinks the Council should entertain an expenditure or provide Thelander Smith authorization to do what they have to do to stop the rain from coming in for the next few weeks.

Councilor O'Connell noted that during the construction of the City Hall shell, Essex Construction presented forty seven change orders in excess of \$116,000 in 2009 and feels their work needs to be double checked by an independent inspector with the findings reported to the council at the January 7th meeting. He proposes to give Thelander Smith \$6,975 to essentially stop the leak now, and to contact Essex Construction and provide a response deadline of two weeks. He continued on by stating he feels we should appropriate \$8500 for the inspector bringing the total to \$15,475. A discussion ensued on temporary vs permanent fix for the windows. It was also discussed whether or not the council needed to approve an appropriation. Mr. Smith said due to liability reasons, touching someone else's work before they have time to respond to do the repairs, you put yourself in a bad position.

Mike Anderson said what he is hearing from the council is: there is consensus that Ken Nagao contact Essex Construction giving them a two week period to respond to our request in repairing the windows. The Council would also like to have an overall building inspection, with the roof looked at and the paint issue resolved.

Councilor Vincent asked if the windows were stored in the Public Works building before being installed and Ms. Nichols said it is her best recollection that those windows were fabricated on site. Ms. Vincent asked if the Council could be involved in the hiring of an inspector. Ms. Nichols responded that the city would have to put out an RFP (Request for Proposal) and then bring back the proposals for approval to

the council. She said she would contact LOC (League of Oregon Cities) to see if they have a template for the RFP.

Mr. Smith expressed his concern with this delay being the substantial completion date for his contract with the city. At the end of January if the work is not completed it will cost him \$500.00 per day. Ms. Nichols replied the Council will need to approve a change order at the January meeting to extend the substantial completion date should council choose to not approve a change order today for repair of the windows.

A discussion ensued regarding a timeline for an RFP for a whole building inspection. Ms. Nichols said she will call the League of Oregon Cities and CityCounty Insurance Services to see if they have a template that we could use and asked Attorney Ross Williamson what the noticing requirements for an RFP would be. Mr. Williamson said he feels this project is less than a \$50,000 expense and therefore we would not need to do a full on formal proposal.

Further discussion ensued regarding Ken Nagao contacting Essex Construction to advise them of the problem and have them assume responsibility for repairs to the windows in order to stop the leaks. After the repairs are completed would be the time to issue the RFP for a building inspection. Discussion continued with the council determining that a two week timeline for response and repair by Essex Construction would be sufficient. Ms Nichols said she would pull the Essex Construction Contract for legal review and forward a copy on to the Council. She will also work with Ken Nagao on drafting a letter to Essex Construction.

Council President Mike Anderson reiterated the council's discussion: Ken Nagao will contact Essex Construction and give them two weeks to complete the repair to the windows. If they are unable or unwilling to do the repairs, the Council should provide authorization to initiate a change order with Thelander Smith to replace the windows and provide an extension to the substantial completion date.

Jacob Daniels moved A.J. O'Connell seconded the council authorize Ken Nagao to contact Essex Construction and request they replace the window properly within the next two weeks. Voted on and the motion passes unanimously.

Jacob Daniels moved Jean McKittrick seconded that should Essex Construction declines to take action on repairing the 2nd Floor City Hall leaky windows within the next two weeks, and the Council has been provided adequate information of Essex Constructions' denial to accept responsibility, the Council authorizes staff to execute a change order with Thelander Smith as presented. Mike Anderson asked for discussion and A.J. O'Connell suggested giving the Council President authority to call an emergency meeting should Essex Construction deny the request in order review the change order. Jacob Daniels withdrew his motion for amendment and Jean McKittrick withdrew her second

Jacob Daniels moved Jane Vincent seconded that after communications with Essex Construction, they choose to deny responsibility and fix the windows, Council President Mike Anderson is authorized to call an emergency meeting to entertain a change order from Thelander Smith Construction for the replacement of the windows. Voted on and the motion carries unanimously.

Jacob Daniels moved Jean McKittrick seconded that the Council authorize staff to execute a \$0.00 change order to push back the substantial completion date of the 2nd Floor Improvements of City Hall twenty one days. Voted on and the motion carries unanimously.

Jacob Daniels moved Jean McKittrick seconded that Finance Director Layli Nichols draft a RFP (Request for Proposal) or a RFQ (Request for Quote) depending on the requirement, for a building inspection for the entire City Hall. Voted on and the motion passes unanimously.

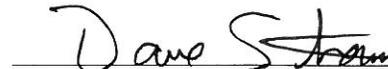
Mike Anderson announced the City has officially been granted an audit extension until March 31, 2013 for the 2011-2012 audit.

A.J. O'Connell commented that Wemego Kansas will be voting on the City Council Oregon Duck game wager at their meeting tomorrow evening.

Adjournment

There being no further business to come before the council, Council President Mike Anderson adjourned the special meeting at 4:16 p.m.


Roberta J Tharp, City Recorder


Dave Stram, Mayor