

A regular meeting of the Astoria Common Council was held at the above place at the hour of 7:00 pm.

Councilors Present: Nemlowill, Warr, Price, Mayor LaMear, and Ward 2 vacant.

Councilors Excused: None

Staff Present: City Manager Estes, Community Development Director Cronin, Planner Ferber, Parks and Recreation Director Cosby, Finance Director Brooks, Fire Chief Ames, Police Chief Johnston, Public Works Director Cook, Library Director Pearson, and City Attorney Henningsgaard. The meeting is recorded and will be transcribed by ABC Transcription Services, Inc.

Mayor LaMear called for a moment of silence for Hal Snow, former City Attorney.

REPORTS OF COUNCILORS

Item 3(a): Councilor Warr said he first came to Astoria 44 years ago on a six-month commitment. He was disappointed at first, but six months later decided to make Astoria his home. Over the years, he has had wonderful opportunities to volunteer in many facets of the community. He served as chair of the Merchant's Association, on the board of the Chamber of Commerce, the school board, on City Council, and in several other community organizations. The past 12 years as a Councilor have been special and it would be difficult for him to leave. The other Councilors have been good to work with and have led the City in the right direction. City Council has been able to do some spectacular things over the last 12 years. He was most proud of his efforts to bring Oregon Health and Science University (OHSU) into its partnership with Columbia Memorial Hospital. Many things in the community have improved. The tourism industry has helped supplant the resource industry, which was the only industry in Astoria before. He thought he would be happy when this day came, but he was not.

Mayor LaMear presented Councilor Warr with a plaque, stating City Council would particularly miss his work on transportation because he was the City's resource on Oregon Department of Transportation (ODOT) issues. She said Councilor Warr was always very fiscally responsible and made sure the City looked for the most efficient way to do things. The City would miss Council Warr very much.

Councilor Warr thanked the City for the plaque and welcomed his replacement, Bruce Jones, and the new City Councilor for Ward 2, Tom Brownson. He believed the City would be in good hands.

Item 3(b): Councilor Price said shortly after she was elected to City Council, she was surprised to see how often she and Councilor Warr agreed with each other. Their disagreements have been very congenial and she never felt as if there was a fence between them. She has known Tom Brownson for a long time and they brainstorm well together. She looked forward to getting to know Bruce Jones. The new Council would be great, but she would miss Councilor Warr a lot.

Item 3(c): Councilor Nemlowill reported that she took her kids to see Santa at the Flavel House. She thanked the Historical Society for the event and apologized for missing the Boards and Commissions Reception. She thanked Board and Commission members for their service. She was happy about the new Councilors coming on board, but was also sad that Councilor Warr would no longer be serving on the Council. She believed Councilor Warr's voice represented many Astorians and his decision-making has led to some of Astoria's proudest achievements. Noting there was nothing she could give to adequately represent the gift he gave to the city, she presented Councilor Warr with a gift of bread, peanut butter, and jelly to make up for all of the dinners he missed by staying late at City Council meetings. She thanked Councilor Warr for doing a thankless job and missing many dinners at home.

Item 3(d): Mayor LaMear reported that Councilors have been asked repeatedly to explain their decision not to designate Astoria as a Sanctuary City. She explained Sanctuary City is a term used by cities to inform their citizens that they will not cooperate with federal authorities to identify or prosecute undocumented immigrants. The term has become loaded, often used derisively by advocates of tougher immigration

restrictions. Both Police Chief Johnston and she have spoken at length with Jorge Gutierrez, Chair of the Lower Columbia Hispanic Council. Mr. Gutierrez indicated he believed the designation could be more polarizing than helpful in a community like Astoria. Council's decision not to declare Astoria a Sanctuary City was in response to the wishes of the Hispanic community. The Police Chief has assured her that the Police Department does not ask about immigration status unless it is related to a crime they are investigating. City Council, staff, and Police Chief Johnston will remain attentive to the concerns and civil rights of Astoria's immigrant community, a community the City values as a part of the larger Astoria community.

Mayor LaMear listed the following Board and Commission appointments and re-appointments for 2017:

- Historic Landmarks Commission – Mac Burns, Michelle Dieffenbach, and Katie Rathmell
- Hospital Authority – Craig Hoppes
- Planning Commission – Dave Pearson and Jennifer Cameron-Lattek

She noted that Tammy Loughran resigned from the Parks and Recreation Advisory Board, but her position would not be filled as the Board still has a quorum. McLaren Innes would be stepping down from the Planning Commission. She asked Ms. Innes to stand for a round of applause.

CHANGES TO AGENDA

There were none.

CONSENT CALENDAR

The following items were presented on the Consent Calendar:

- 5(a) City Council Minutes of 11/21/16
- 5(b) Boards and Commission Minutes
 - (1) Planning Commission Meeting of 10/25/16
- 5(c) Authorization to Enter into a Two-Year Consulting Agreement with Ellis and Associates (Parks)
- 5(d) Authorization to Designate Mill Pond and Apply for All-Star Grant to Fund New Interpretive Panel (Community Development)
- 5(e) 33rd Street and Highway 30 Street Lights – Authorization to Approve Intergovernmental Agreement (IGA) Amendment (Public Works)
- 5(f) Fuel System Replacement Project – Leaking Underground Storage Tank (LUST) Cost Recovery Agreement (Public Works)
- 5(g) Authorization of Lease Agreement for Riverwalk (Community Development)

City Council Action: Motion made by Councilor Warr, seconded by Councilor Nemlowill, to approve the Consent Calendar. Motion carried unanimously. Ayes: Councilors Price, Warr, Nemlowill, and Mayor LaMear; Nays: None.

REGULAR AGENDA ITEMS

Item 6(a): Public Hearing regarding Appeal (AP16-01) by Heather Hansen of Conditional Use Permit (CU16-10) at 3930 Abbey Lane Building A Unit 104 (Community Development)

On September 22, 2016, Daryl Bell applied for a Conditional Use permit (CU16-10) to the Astoria Planning Commission (APC) to locate a medical-recreational marijuana dispensary as a retail sales establishment at 3930 Abbey Lane in Building A Unit 104, zoned S-2A. "Tourist-Oriented Retail Sales" is an outright permitted use in the S-2A zone. A "Retail Sales Establishment" requires a conditional use permit in the S-2A zone. A Notice of Appeal on the APC decision was submitted by Heather Hansen on November 11, 2016. The Notice of Appeal, which details the appellant's concerns, can be found on Page 1 of the appeal packet. A complete record of the request has been compiled and itemized and is attached. It is recommended that the City Council hold the public hearing on the appeal and consider whether to uphold, reverse, or remand the Astoria Planning Commission decision for CU16-10.

Planner Ferber presented the staff report, which included a timeline, the criteria presented to the Planning Commission, criteria submitted by the Applicant, the Planning Commission's conditions of approval, information submitted earlier that day by the Applicant and Appellant, and Council's options for next steps. She noted the

Memorandum for this meeting erroneously stated the Notice of Appeal was submitted on November 11th and noted the correct date was November 14th.

Mayor LaMear opened the public hearing at 7:32 pm and asked if anyone objected to the jurisdiction of the City Council to hear this matter at this time. There were none. She asked if any Councilor had a conflict of interest or ex parte contact to declare.

Councilor Price declared that she visited the site to view the parking lot and entrances, but had no ex parte contact.

Mayor LaMear explained the procedures governing the conduct of public hearings to the audience and advised that handouts of the substantive review criteria were available from staff. She called for a presentation by the Appellant.

Heather Hanson, 3990 Abbey Lane, Astoria, thanked City Council for considering the appeal and said she did not anticipate a lot of public testimony. The evaluation of the review criteria, findings, and conclusions were included in the staff report and were adopted by the Planning Commission to support their decision. However, the evaluation did not address the fact that the proposed use would be in a residential building. The building is in a mixed-use zone and commercial uses are expected on the ground floor of the building, but that did not negate the residential uses that should be considered in the evaluation. Comments made by several Planning Commissioners at their hearing indicated that they felt compelled to approve the use since it met the criteria. There was also discussion about the ground floor being intended for commercial uses and implications that any commercial use would be approved. One Commissioner mentioned that this use could not be treated differently than any other commercial use.

- The commercial use category is very broad and includes personal and professional services, offices, retail, and other types of uses. The impacts of the specific uses within those categories on neighbors vary. When review criteria are clear and objective, such as a 20-ft setback or 30-ft height limit, staff can make a decision. However, when review criteria are subjective and discretionary, as they are for conditional uses, the decision is made by the Planning Commission. The Planning Commission is not required to approve all uses that may be allowed in a particular zone. In this case, one of the review criteria found in Section 30(a) (1) states that the use is appropriate at the proposed location. This is subjective. If the criterion means that the zoning allows a commercial use and must be approved, then there would be no need for a review by the Planning Commission. Webster defines appropriate as especially suitable or compatible. How can a decision maker determine whether a use is suitable or compatible without evaluating the impacts to the 30 residences in the same building and the 33 residences next door?
- She understood City Code does not regulate the number of dispensaries, but it does mention consideration of the availability of similar existing uses. There are already five existing permitted dispensaries in Astoria, one as close as 29th Street, and two more in the works. No valid argument can be made that another dispensary is needed so badly that the other five are not available. By comparison, there are three pharmacies and one liquor store in Astoria. Astoria does not need another dispensary so badly that it must be located in a building with 30 existing residences. If City Council does not believe the other five dispensaries are not sufficient or available, Council can consider the compatibility of the proposed dispensary with existing residences.
- This use is a cash only business selling a controlled substance and requires extra security that includes video cameras. The Applicants have said they would patrol the parking lot to make sure customers are not loitering or using the products on site. However, the requirements for patrols were not included as a condition of approval. Even if it were, the need for the extra security indicates the use may not be appropriate for the location. Additionally, there are no guarantees that the Applicants would manage the store. The State does not allow marijuana dispensaries in residential zones. Even though this regulation does not apply to this case, it indicates there are concerns about co-locating marijuana dispensaries with residences. A family with a young child lives in the unit directly above the dispensary's space and there are many single women and retirees who live in the two condominium buildings. Therefore, security is very important to their safety and well-being. The need to add video cameras at the entrance to the building will make the residents feel like they are living in an unsafe place.
- Access to the building is shared and includes locked doors to residential elevators and stairwells. However, residents can only access these locked doors after walking through the shared parking areas and passageways as the customers. Access to the store will be directly across from the locked door to the elevator near the mailboxes. Residents must stop at the locked door to get their keys out while constantly

looking over their shoulder to make sure no is right behind them. This is even more of a concern for a store with a lot of cash on hand. She had no idea how the building could be retrofitted to separate the residential and commercial accesses.

- The application indicates the store would be open for 12 hours, but the Applicant told the Planning Commission it would be open for 10 hours. However, the actual hours of operation were never mentioned or considered. She believed the hours of operation would impact the residences. The Applicant estimated the store would serve about 50 customers a day and she questioned what this was based on. If the estimate were accurate, there would be four to five customers per hour if customers arrived at even intervals throughout the day. The dispensary was described as being like a wine bar, but it is not legal to use the products on site like a wine bar. The other commercial uses in the building are appropriate and compatible because they are mainly offices and personal services that have a limited number of customers and deliveries per day.
- In the land use planning profession, the intent or purpose of the regulations is considered when there is uncertainty about how to apply a section of the Code. The purpose statement for conditional uses states that the purpose of the conditional use process is to allow, when desirable, uses that would not be appropriate throughout a zoning district or without the restrictions in that district and would be beneficial to the City if their number, area, location, design, and relation to the surrounding property are controlled. As a condominium resident and professional planner, she struggled to come up with an effective way to control for the negative impacts of the proposed retail use on the surrounding residential units. Limiting hours of operation would be a step in the right direction, but adding video cameras, security lighting, or parking lot patrols are not reasonable. None of the other dispensaries in Astoria share these issues. She asked if any of the Councilors would chose to live in those conditions. She also asked Council to consider the safety and well-being of the residents that would be impacted by their decision.

Mayor LaMear called for testimony in favor of the appeal.

Jim Ray, 62 West Bond, Astoria, said he was on the board of the Astoria Rescue Mission and was aware of the effects of addictive substances. He strongly opposed allowing a pot shop in a condominium complex. Every pot shop is a target of armed robberies, theft, and violent crimes. He questioned why the community's guardians would approve this proposal. Everyone in this room and everyone in society is alarmed at the trillions of dollars spent on building new prisons, operating expenses, maintaining prisons, and the more than two million individuals incarcerated. Court costs for processing criminal activities equals billions of dollars annually. Annual insurance payouts for drunk and impaired acts affect everyone by way of inflated insurance premiums. The pain and suffering of children and families caused by addictive behaviors cannot be measured. If it were possible to erase the effects of pot, drugs, and alcohol from the lives of every incarcerated person, the prison population would be reduced by more than 80 percent. For many years, he worked as the food buyer for every state institution in California, including prisons, hospitals, youth authority facilities, and special schools. He also served as a warehouse manager for Folsom Prison in California. He has had dozens of inmates in his custody, so he knew what he was talking about. Society is deteriorating. Liquor licenses have been denied to applicants because concerned citizens raised their voices with legitimate justifications. The residents who have invested their life savings in these condominiums will become victims of the crimes resulting from a pot shop on the ground floor of their homes. City Council can prevent this travesty. He did not believe Councilors would tolerate a pot shop in their own houses. Council knew about the recent fire in a local pot shop and he asked them to consider a fire in a high-density multi story housing complex. Many of the condominium residents are elderly and their attempt to escape from a pot related fire could prove fatal. He stated, "Do unto others as you would have them do unto you" and asked City Council to deny the application.

Mayor LaMear called for testimony opposed to the appeal.

Perry Salzhauer, Greenlight Law Group, Portland, representing the Applicant, stated all of the issues raised by the Appellant have been considered on multiple levels. While the Appellant claims a prohibition against retail dispensaries in an exclusively residential neighborhood represents a judgment call by the legislature, it also reflects a legislative determination that the use is appropriate for mixed-use neighborhoods. The State legislature has already considered these issues and City Council considered the issues by not prohibiting the dispensary. The Planning Commission also considered and approved the dispensary. This appeal is the third or fourth time the issue has been considered at both the State and local levels. A conditional use is not committed to absolute discretion and the use of the word appropriate in a very complicated land use context is very different from the use of the word in common parlance. If this issue and every conditional use application were committed

to absolute discretion, the entire point of the conditional use criteria would be eviscerated and allow for certain cooptions of the legislative process by angry citizens. The results of legislative processes do not always yield the desired result. However, the system is designed to consider these issues, just as the Planning Commission did in this case. The Development Code addresses this situation through the conditional use criteria and every criterion was considered, determined, and decided in the Applicant's favor. It is also important to note that the residential use, which is the focus of the appeal, is itself a conditional use within the S2-A zone. Additionally, this residential use likely has a greater impact on the Coastal Zone than a 950 sq ft retail establishment. The Appellant and the person who testified in support of the appeal presupposed that there would be negative effects. They did not provide any fact based evidence of their hypothetical and anecdotal claims. Oregon Liquor Control Commission (OLCC) dictates the hours of operation of retail dispensaries. The Applicants have made multiple attempts to work with the condominium association to address and mitigate impacts that may or may not occur.

City Manager Estes stated for the record that testimony was received in writing throughout the day and was available at the dais.

Daryl Bell, 3930 Abbey Lane, Astoria, said it did not feel good to be the harbinger of doom and he completely understood why there were concerns. However, his dispensary would be a good steward of the community if given the opportunity. The dispensary would maintain a clean, safe, and tasteful environment for the employees and customers while keeping in mind that the residents above the dispensary would want the same thing. He would provide comprehensive, state of the art surveillance and security that would exceed the requirements by the State in most cases. It seemed as if there were concerns about their surveillance, but he did not understand how it would compromise the integrity of the community. The premises would be monitored to ensure there is no loitering or suspect behavior, they would honor the parking assignments as stipulated by Cannery Lofts, carbon filter odor mitigation systems would be implemented, and the store would hire locally. He just wanted the opportunity to open the business and be a part of the community. The last thing he wanted was to be an impetus for some type of acrimony that flows into the community.

Tarell Buckner, Seaside, noted he had just moved and was unsure of his exact address. The fire in Astoria was a result of processing cannabis, which the proposed dispensary would not be doing on site. There is a fundamental difference between retail sales and processing. Processing uses highly flammable natural gas liquids, which will not be on the dispensary's site at all. Therefore, concerns about individuals escaping a fire should not be an issue. Safety was addressed in the previous hearing, but he would address the concerns again. It was brought to his attention that the building has had instances that made residents feel unsafe. So, in addition to securing the dispensary, he decided to go above and beyond what was required to benefit the residents and the community as a whole. The residents cannot have it two ways by saying they currently feel unsafe with a marijuana business in the building and that the proposed additional security would make them feel inherently unsafe as well. Most of the issues raised about the conditional use permit have already been addressed and the Applicants have already met the requirements necessary to operate a dispensary in the proposed location. No additional information has been presented by the Appellant that would or should reverse the Planning Commission's decision. Therefore, he hoped City Council would agree with the Applicants that the appeal should be denied.

Dr. Ted Forcum, 3990 Abbey Lane, Astoria, stated he owned the commercial unit that would be rented to the Applicants for the dispensary. He acquired many of the commercial units in the building in 2012 and this particular unit in 2014. During that time, the building went through the rezoning process. This unit has been vacant since 2007, in part because the residential mailboxes block the entrance egress to the space. He was working to resolve this issue through litigation between himself, his company, and the homeowners association's board. The adjacent units have leaks and mold that come from the residential units above the commercial space. The proposed location for the dispensary is the only dry commercial space in the complex. The original zoning of the building was for commercial use and the residential units were allowed as a conditional use. The Planning Commission approved this application for good reasons. He initially had a knee jerk reaction to the application for the marijuana dispensary. Over 16 people have asked to locate a dispensary in his commercial units, but he chose Mr. Bell's dispensary because of his willingness to add extra security and bring in local artisans to augment the business. He has done a lot of research on the impacts of dispensaries on mixed-use complexes, including site visits and peer reviews. He has received complaints about every commercial tenant at the complex, the day spa, mini-storage, mental health counselors, medical offices, law offices, charitable organizations, and yoga studios. This indicates there is no perfect commercial tenant for the Cannery Loft

residents and owners. However, nothing is perfect. He believed the dispensary would be a very viable tenant. He asked that City Council defer to the Planning Commission's decision.

Mayor LaMear called for a recess at 8:01 pm to allow Councilors time to read the written testimonies that had been submitted earlier that day. The City Council meeting reconvened at 8:06 pm. Mayor LaMear confirmed there was no more public testimony and called for the Appellant's rebuttal.

Ms. Hanson said she had brought up most of her issues prior to this hearing. However, issues that were not included in the staff report at the Planning Commission's hearing are completely different from public testimony. Public testimony comes from the perspective of someone who is complaining instead of from the perspective of a serious evaluation. If the residences in the building and next door had been part of staff's evaluation, she believed there would have been more discussion about how to access the building and where security cameras would be located. The Applicant has mentioned that they tried multiple times to work with the condominium association, but she was not aware that the dispensary had ever been mentioned to the association. She had asked people who attend the condominium association meetings and they could not recall the dispensary ever being mentioned. She was not sure why Mr. Bell stated his residential address was 3930 Abbey Lane because she was sure he did not live there. However, the address could be his business address or he was living in a condominium and she was not aware of it. State of the art surveillance is a problem because it would not normally be needed. People who live in large cities or areas where a lot of people come off the street and commit crimes in front of their buildings would want good security. However, this is not how people normally live in Astoria. There was discussion of people wandering in from the Riverwalk and using some of the buildings dark corners and areas as restrooms, but the reason for that is the building does not have on site management. The property manager is in Portland, so light bulbs are out for long periods of time, which leave many dark corridors and stairways. This would just add to that situation. She would not want to live in a place that has cameras everywhere. The dispensary would have an absentee landlord, as Dr. Forcum only lives at the condominium part time. This means there would be no one to deal with issues on a timely basis. A use like this dispensary would attract more of the public off of the Riverwalk. The local artisans proposed to be part of the business are not part of this application and are not being reviewed by City Council. She was unaware of complaints about other commercial uses, but understood that some people were generally grouchy and did not like anything to change. She is a renter, so this use would not have a long term impact on her. However, she cared about the people she has become friends with and this dispensary does not feel compatible to her. There are other options in Astoria and there are no other circumstances like this one.

Councilor Warr asked what percentage of Cannery Loft residents opposed the dispensary. Ms. Hanson said she could not remember, but the Planning Commission's staff report included quite a few signatures. Councilor Warr said there were 30 signatures and Ms. Hanson noted some people were not available to sign the petition in time. There was only one person who testified in favor of the application.

Councilor Nemlowill confirmed Ms. Hanson believed a large number of her neighbors agreed the dispensary was not a compatible use and that this type of business would not contribute to the attractiveness or the livability of the neighborhood.

Councilor Price said she went through the list of people who signed the petition and counted signatures from 19 units at 3930 Abbey Lane and 9 units at 3990 Abbey Lane. Ms. Hanson said a fair number of people stay at the condominiums on weekends and were not present to respond to the petition. She read in the staff report that Mr. Bell had been involved in building marijuana shops in other places in Oregon and asked if he was aware of any retail establishments in residential condominium buildings.

Mr. Bell said he was in the process of building a dispensary in a mixed-use condominium building in Rockaway. He confirmed he had the permits and the project was moving forward. With so many dispensaries in the state, there could be a dispensary located in a residential condominium building, but he was uncertain.

City Manager Estes clarified for Ms. Hanson that any clarifications from staff would occur once the public hearing is closed.

Ms. Hanson asked how the building in Rockaway was designed, and where the entrances and parking were located to understand if it was equivalent. There was no response.

Mayor LaMear closed the public hearing at 8:15 pm and called for Council's discussion with staff and deliberation.

Councilor Price said she was surprised to hear that the purpose of Development Code Section 11.010 is not considered a criterion and asked if that meant Council could not consider the purpose as well. She did not understand the point of Article 11 if the purpose were taken away. City Attorney Henningsgaard explained that the purpose statement of any statute is merely an aid to interpret the language that follows it. Purpose statements provide background and context for interpreting the rest of the statute and are not independent criterion.

Councilor Price confirmed with Mr. Henningsgaard that it would be appropriate for Council to consider the desirability about this project, to whom the project would be desirable, and how the project would benefit the City. She asked if staff agreed. City Manager Estes clarified that it was up to City Council to determine whether they agreed with the Planning Commission's decision. If City Council agrees with the Planning Commission, Council will need to adopt the findings that were adopted by the Planning Commission. If City Council does not concur with the Planning Commission, Council will need to provide staff with their reasons.

Councilor Nemlowill said she was concerned that so many residents at the Cannery Loft did not want this type of business on the ground floor. She has carefully reviewed the Planning Commission's work, the staff report, and the findings of fact. While the Community Development Director and Planner did an excellent job, she believed the findings were missing the housing elements. The staff report and findings of fact note that the proposal is compliant with the Comprehensive Plan. This may be, in terms of economic goals, but she did not believe it was compliant when it came to the housing element. The business would not be in a residential zone; however, there are a high amount of residences in the building. There are a few housing elements in the Comprehensive Plan that she believed applied to this project. CP.220.6 protects neighborhoods from incompatible uses. The Appellant has stated that this would not be a compatible use and there are many residents who feel the same way. CP.220.1 maintains attractive and liveable residential neighborhoods for all types of housing. The Appellant has stated she and others do not feel this would be attractive or good for the livability of that location. Because the housing element was not included in the staff report as applicable criteria, she recommended the housing element be included in the findings of fact and that the issue be remanded back to the Planning Commission.

City Manager Estes explained that the only way to remand this issue back to the Planning Commission would be to get an extension from the Applicant. The 120-day rule requires a final decision to be made in January.

Councilor Nemlowill said if the Applicant did not want to grant an extension, City Council's option would be to uphold the appeal now, which she supported.

Mayor LaMear asked who had jurisdiction over the parking at the complex. She wanted to know if the City's Comprehensive Plan and ordinances took precedence over condominium association by-laws.

Planner Ferber explained that parking issues were complicated at this site because of the rezoning and because it is a mixed-use building. Parking is always determined by use and the existing parking was determined by the site's original industrial zoning. City Manager Estes added that the Development Code specifies a certain number of required parking spaces per use. The requirement for this commercial use is one space for every 500 sq ft. In this case, two parking spaces are required. Additionally, covenants and restrictions that are part of the condominium development may include more parking provisions that the City cannot enforce. However, the homeowners association could enforce restrictions that are outside the City's requirements. For example, the City enforced design review requirements on the Mill Pond Zoning District, but the Mill Pond Homeowners Association has its own separate design review requirements. In this case, the Applicant would need to comply with both the City and the building's requirements.

Mayor LaMear said some of the reports state the number of police calls to existing marijuana dispensaries in Astoria has been high. She asked how much time these calls took from other police matters. Chief Johnston said the reports did not match his perception of the situation.

Mayor LaMear confirmed that all other marijuana dispensaries in Astoria were located in either a C-3 or C-4 Commercial Zone. She agreed with Councilor Nemlowill and Planning Commissioner Frank Spence's comments

in the minutes of the Planning Commission's meeting. These condominiums are zoned Shoreland Tourist, but all condominiums are residential buildings. She planned to vote in favor of the Appellant.

Councilor Price stated CP220.2 provides residential areas with services and facilities necessary for safe, healthy, and convenient urban living. She understood this area was a Shoreland S2-A Zone, not a residential zone. However, this issue is one of several that have come before City Council because they have not taken the time to discuss any regulations on the retail sales of marijuana. Portland specifically prohibits marijuana retailing in existing mixed-use buildings with a residential emphasis. She believed Astoria should consider this in addition to just the number of dispensaries. The closest dispensary is 11 blocks away, which does not create a burden. The great majority of residents feel this is not appropriate and it is clear that there is a wide availability of similar shops. Several sections of the Comprehensive Plan have to do with housing policies that she believed this dispensary would not comply with. Therefore, she planned to vote in favor of the Appellant. She suggested City Council reconsider Astoria's retail and medicinal marijuana policies.

Councilor Warr said during his time on City Council, he has always tried to vote based solely on the facts and the rules. However, in this case, since this will be his last vote, he would permit himself to vote emotionally. The condominiums were terribly built; they leaked, the siding did not hold the weather out, and the owners have spent thousands of dollars to repair issues that never should have happened. Most condominiums do not contain retail space that is zoned outside of the homeowners association. Under most conditions, the homeowners do not get a voice and it is time for these homeowners to get a break. Therefore, he planned to vote in favor of the Appellant.

City Manager Estes reminded that the existing findings support denial of the appeal, so staff must bring back revised findings at a future meeting before City Council can vote. Council can vote to tentatively approve the appeal and direct staff to prepare revised findings based on Council's comments. A new City Council will be in place before the next Council meeting, so it might be appropriate to schedule a special meeting next week to allow the current Councilors to review new findings.

City Attorney Henningsgaard added that the new Councilors were present and have heard the public testimony and Council's discussion. The new Councilors could vote next year if they can state that they have considered the record in full. However, a special meeting could be scheduled if Council wants to wrap up this issue this year.

Mayor LaMear said she preferred to schedule a special meeting.

Councilor Nemlowill asked what the process would be for reviewing revised findings of fact. She wanted to know if the Applicant would give testimony and if another public hearing would be conducted. City Attorney Henningsgaard said no, the public hearing has already been closed. Councilor Nemlowill said she was concerned about fairness because the Applicant has not had an opportunity to respond to the housing element issues raised by Council. The original staff report contained other findings of fact that the Applicant was able to respond to.

City Manager Estes confirmed with City Attorney Henningsgaard that if this issue was remanded back to the Planning Commission, dialogue with the Applicant would be necessary to find out if the Applicant would be willing to grant an extension to the 120-day rule. This discussion would need to take place at this meeting.

Councilor Warr was not sure how Council could refrain from remanding the issue back to the Planning Commission. City Manager Estes explained that under Oregon land use laws, the Applicant is the only one who can grant an extension to the 120-day rule. The extension would allow the additional time necessary to provide adequate notice. If this issue is remanded back to the Planning Commission, another appeal to City Council could be filed depending on the Planning Commission's decision.

Councilor Warr said he preferred City Council make a decision at this meeting. City Manager Estes reminded that staff was not prepared with revised findings.

Councilor Nemlowill said she did not want to make the decision messy and was concerned about the legal implications of adding findings that the Applicant has not had an opportunity to address. City Attorney Henningsgaard believed the housing issues had been raised. The property is unique and City Council is the decision making body. This is a matter of process and Council's decision with respect to the appropriate

development of the condominiums will carry a lot more weight than the Planning Commission's decision. City Council will set a precedent. Councilors have stated what they believe is and is not appropriate in this setting and there is no other property in Astoria like this one. Therefore, City Council's opinion on this matter is very valuable.

Councilor Nemlowill believed a denial would have to relate to the current findings. City Attorney Henningsgaard explained that City Council is not bound by the Planning Commission's findings in any way. Council must decide whether the evidence supports the application with respect to the Code. Applicable criteria are subjective rather than objective, so Council needs to consider whether the use is compatible and appropriate. These types of decisions are subject to differences of opinions, but it is City Council's opinion that carries more weight than the Planning Commission's. Therefore, he did not believe there would be a problem.

Councilor Price said her considerations that this use was not appropriate for this location was in accordance with the sections of the Comprehensive Plan mentioned by Councilor Nemlowill and herself, as well as the criteria considered by the Planning Commission.

City Council Action: Motion made by Mayor LaMear, seconded by Councilor Price to tentatively approve Appeal AP16-01 by Heather Hansen of Conditional Use Permit CU16-10 and direct staff to revise the Findings and Conclusion contained in the staff report. Motion carried unanimously. Ayes: Councilors Price, Warr, Nemlowill and Mayor LaMear; Nays: None.

City Manager Estes asked if Council wanted to schedule a special meeting in December to review the revised findings. After some discussion with staff about timing, workload, and availability, City Council agreed to review the revised findings at a special meeting on Thursday, December 29, 2016 at 10:00 am in City Council Chambers with some Councilors and staff attending via telephone.

Item 6(b): Trolley Trestle Repair Project 2017 – Contract Amendment #1 (Public Works)

At their October 17, 2016 meeting, the City Council approved a design services contract with OBEC Consulting Engineers, Inc., to assist the City with completion of critical trestle maintenance work. During the design process it became apparent that maintenance work will need to be postponed until early April. To allow the Trolley to safely operate during March, a supplemental inspection is needed to verify the condition of the critical portions of the trestles. OBEC provided an estimate for this work for a total not-to-exceed cost of \$12,665. The Riverfront Trolley Association has agreed to split the cost of the supplemental inspection in the amount of \$6,332.50. The additional inspection work does not guarantee Trolley operation but will assist staff in determining whether safe operation can be permitted. We anticipate being able to permit operation with only minor temporary repairs ahead of the larger maintenance project. Funding is available for Contract Amendment #1 in the Promote Astoria Fund; however, a supplemental budget will need to be approved to appropriately fund construction of the trestle improvements prior to awarding a construction contract. We anticipate bringing the supplemental budget for Council consideration in March 2017 with the construction contract anticipated in April 2017. It is recommended that Council approve Contract Amendment #1 for additional inspection services for the 2017 Trolley Trestle Repair Project.

City Council Action: Motion made by Councilor Warr, seconded by Councilor Nemlowill to approve Contract Amendment #1 for additional inspection services for the 2017 Trolley Trestle Repair Project. Motion carried unanimously. Ayes: Councilors Price, Warr, Nemlowill and Mayor LaMear; Nays: None.

NEW BUSINESS & MISCELLANEOUS, PUBLIC COMMENTS (NON-AGENDA)

Chris Farrar, 3023 Harrison Avenue, Astoria, stated Council was aware of concerns about the quality of water being served to the citizens of Astoria. However, these concerns have never been fully revealed to the public. Over the last few days, he has spoken to several concerned citizens including a pregnant woman. He believed the public deserved to have all of the information the City has about its water and the substances in the water. If the City simply gives people the information they need, they will feel a lot better about the water quality. No one is pointing fingers or trying to cause problems, but the City can deflate concerns just by giving the public all of the information.

Mayor LaMear confirmed with Director Cook that a letter would be sent out to all water customers with their next bill. City Manager Estes added that the home page of the City's website contained a memorandum explaining all of the technical issues on the water quality and the Water Supervisor's contact information.

Mr. Farrar said he appreciated the City's efforts to inform people and confirmed that staff was not in the process of hiring a new water quality manager. He also stated that he appreciated his Councilor, Councilor Warr. Two nights each month for 12 years, Councilor Warr has had to come to meetings to listen to people like himself and review 200+ page packets. Councilor Warr rarely missed a meeting, always showed up very well prepared, and always stated his position clearly. While he was often on a different track from Councilor Warr, he appreciated the Councilor's more conservative side and ability to give people confidence in his representation of his constituents. It is important that this Council refrain from making unanimous decisions all the time and Councilor Warr gave people a voice.

Perry Salzhauer, Greenlight Law Group, Portland, stated he wanted the City's guidance on appropriate uses within the S2-A Zone, given City Council's decision on the appeal. He asked what types of businesses the City would consider appropriate and allowable, given the type of zone, compared to uses allowed outright within that zone. He also asked that the City provide clarification on parking, which is very limited in commercial zones. Earlier that day, only 20.7 percent of the available spaces were occupied, so parking spaces are highly available in that area. He understood everyone's concerns, but he had to look at the issues from a realistic standpoint. He also needs to determine which uses would be better and have a lower impact to the residences in that space.

City Attorney Henningsgaard said it would not be appropriate for staff to discuss this at this meeting and suggested Mr. Sauzauer contact Director Cronin after the hearing.

ADJOURNMENT

There being no further business, the meeting was adjourned at 8:55 pm.

ATTEST:


Finance Director

APPROVED



City Manager