

City of Jefferson
Executive Session
Council Worksession/Public Hearing (LUBA Remand)
July 13, 2017
5:30pm

Council Present: Dave Beyerl, Mike Myers, Bob Burns, Cyndie Hightower, Stan Neal, Brad Cheney, Walt Perry

Council Absent: none

Staff Present: Greg Ellis, Lissa Davis, Deanna Donato, Jeff Buskirk

Guests: Carrie Connelly-Speer Hoyt , John Kennedy-Morley Thomas Law Firm, David Coulombe- Fewel, Brewer & Coulombe Attorneys at Law, Brian Vandetta—Udell Engineering, Leslie Hauer-planner

I. **CALL TO ORDER/FLAG SALUTE:** The Mayor called the meeting to order at 530 pm followed by the flag salute.

II. **EXECUTIVE SESSION: To Discuss Current or Possible Litigation**

The Mayor read statement giving the reason for the executive session (ORS 192.660 (2) (h)). Carrie Connelly then stated the Mayor should add as an addendum to the executive session reason (ORS 192.660 (2) (f)). This section allows them to consider information or records that are exempt by law from public inspection. Executive session starts at 5:32 pm.

Return from Executive Session: 6:47 pm.

Mayor opens the meeting with a moment of silence for Scott Bittick and gave card to his wife Stacy. Stacy stated there would be a Celebration of Life for Scott June 30th at 220 Main St.

III. **WORK SESSION TOPICS:**

1. **Councilor Burns Resignation Letter:** Greg stated Councilor Burns letter of resignation, effective at 5pm on July 27, 2017, was introduced at the June 22 meeting. Asks that they discuss and motion on it. Councilor Beyerl moved to accept, Councilor Cheney seconded. All in favor. Motion carried.

2. **Public Hearing: LUBA remand for Hamby Annexation:** Mayor reads title of Public Hearing. Opens Public Hearing at 6:51 pm. Mayor read script. Mayor stated the Mayor and Council must disclose any conflicts. Councilors have compiled disclosures.

Councilor Beyerl: he disclosed that Paul Terjeson and he had an ex-parte conversation prior to the first meeting. Carrie Connelly: She asked Councilor Beyerl when he was approached by Mr. Terjeson, did anything specific come up. Councilor Beyerl: No, he didn't let it get that far.

Councilor Myers: read his statement regarding contact with then citizen Brad Cheney. Mr. Cheney asked if SB1573 would affect his vote on the annexation. He read his answer to Mr. Cheney's email. Carrie Connelly: She asked if any emails he received would be submitted for the record and Councilor Myers said yes.

Councilor Burns: read his statement. He stated he had no ex-parte conversations with anybody from the other side. He will be leaving in a few days and believes most of this is mitigated circumstances. He enters into this discussion without preconceived ideas and will set aside any preconceived ideas. Carrie Connelly: Asked what his potential conflict pertained to. Councilor Burns: Stated that it was a blanket statement to cover it all.

Councilor Neal: He declared a potential conflict as his property is adjacent to the property up for annexation. He read his statement and said he enters hearing without preconception and will set aside personal views. He disclosed three ex-parte

communications and read and entered those forms into the record. (Ex-parte conversations were with McClung, Persons, Hamby/Rod Beckner)

Councilor Cheney: He spoke about Mr. Kennedy's motion to disqualify him from the discussion. He stated he would respond to the four statements that Mr. Kennedy points out and then will summarize. 1. The statement in question was made before he was a city councilor. 2. Another post on a social media page before he was a city councilor. 3. A Democrat Herald post and 4. A statement about after being elected should he just rollover? Councilor Cheney is impressed with Mr. Kennedy's 35 pages to disqualify him. He stated he has a potential conflict due to location of his property to the annexation property. He will not recuse himself. States again that he has a potential conflict and he will not prejudge the application based on prior posts. He enters this discussion without preconception and will set aside any personal views and will base his decision only on the facts.

Carrie Connelly stated she would like to re-visit Councilor Neal on that subject. She asked Councilor Neal if he declared potential conflict or not. Councilor Neal said he had and also stated he resigned from SRCOJ (Select Reform Committee of Jefferson) and J4J (Jeffersonian 4 Jefferson) before he was sworn in.

Councilor Perry: He said he was declaring only 1 item as a caution. While attending a "Meet the Candidate Forum", he was asked various questions. Carrie Connelly: She asked if he could make a decision on this annexation and Councilor Perry stated he will base his decision on the law and the record, not on personal views.

Mayor Hightower: Stated she was treasurer for J4J and any involvement she had with that group would not affect her decision on the annexation. Carrie asked if she had any ex-parte contacts and she said no.

Carrie Connelly informs the Council that since a challenge was issued to Councilor Cheney, the Council needs a motion.

David Coulombe attempts to make a point of order and uproar from audience ensues. Carrie informs Mayor Hightower that the hearing is not open to public testimony at this time and Council may proceed without acknowledging Mr. Coulombe.

Councilor Burns: motioned to allow Councilor Cheney to participate and Councilor Neal seconded. All were in favor, motion passed unanimously. Tre Kennedy asked if information on Councilor Burns had been received and the answer was no.

Councilor Cheney: entered his ex-parte conversations as he had not previously done so. He stated he had personal legal counsel (Mr. Swain) that had directed him to enter these conversations in for the record.

Carrie Connelly: She had heard from Mr. Kennedy that there was an objection filed with Councilor Burns but she did not seem to have the paperwork.

Councilor Perry: He made a motion to remove Councilor Burns as he had turned in his resignation and is leaving. Councilor Myers stated his motion is not allowed and Carrie agreed.

Mr. Kennedy: He apologized for the second disqualification not coming through and then outlined his concerns regarding Councilor Burns. In an August 2016 comment in the Democrat Herald it seemed as if Mr. Burns was prejudging the development code and had formed an opinion. In another post later, Councilor Burns had stated his opinion which leaves Mr. Kennedy questioning if Councilor Burns can put his personal opinions to the side. Carrie informs Councilor Burns that he can rebut Mr. Kennedy. Councilor Burns stated he could put his personal opinions aside and he would not recuse himself.

Mr. Coulombe objected and Carrie informed him that he can't just object, he needs to state the basis for his objection.

Mayor Hightower asked Carrie Connelly about voting on Councilor Burns and Carrie said that because she didn't review the information on Councilor Burns and since staff did not receive it, it could not be forward to Councilor Burns for rebuttal. Mr. Kennedy stated he was willing to give Councilor Burns time to respond to the challenge. Carrie: Asked if Mr. Kennedy would be willing to allow Councilor Burns to hear the information. He would participate now and respond in written statement for the record. Mr. Kennedy said yes and all parties agreed.

Mayor read the next statement regarding staff report and what could be discussed. She then turned the discussion over to City Planner Lissa Davis to read the staff report. Lissa read the summary of the report in which staff found no unresolved issues and recommended the annexation be approved. Lissa then asked if there were any questions of staff:

Councilor Burns: With regard to the locked railroad crossing gate at Weid Rd, he wanted to know how far that was. PWD Jeff Buskirk stated it's about a mile. Councilor Burns corrected Jeff and said he measured it to be about mile and half. Carrie Connelly cautions them about ex-parte conversations, which include site visits, and pointed out that Councilor Burns had just revealed an additional ex-parte contact. Councilor Cheney remembered another ex-parte contact and Carrie said now is a good time to introduce that conversation. Councilor Cheney stated that he and Councilor Neal had also checked out the locked gate. He will write up that site visit and enter it into the record.

It is now Mr. Kennedy's turn:

Mr. Kennedy introduces himself along with planner Leslie Hauer and Brian Vandetta the engineer from Udell Engineering. He also mentioned Nancy Hamby as the representative for the Hamby family.

Mr. Kennedy: Stated that over a month ago information was turned in to Council. He is going to request the record and hearing remain open due to recent information. He stated Councilor Neal's issue in regards to emergency services only affects the annexation if permits are issued to build. The issues Councilor Neal raised do not affect the City's decision to annex the land in and it is not appropriate to consider emergency services until something is actually built. Currently the annexation is about one piece of land with nothing on it. He received the letter from J4J and he agrees with the staff report as they have addressed all issues that LUBA addressed. He then asked for any questions from the Council of what he just said.

Councilor Burns: On figure 2 under the traffic report, the question is will the annexation look like the picture. Ms. Hauer: No, when a traffic engineer looks at something like this, they must always do a worst case scenario. There is no application for development at this time.

Councilor Cheney: Asked Ms. Hauer some questions pertaining to her role in the annexation. Ms. Hauer stated that her role is explained on page 3 of her report. Her task was to look at why LUBA remanded it back to the City and speak to the criteria issues. She then asked for any other questions.

Councilor Perry: On the transportation portion, one of the most aggravating things in the report is does it say everyone is going to be traveling over the tracks. Ms. Hauer: The information is all based on computer models. Councilor Perry: So it appears to be proportional then to what it is today. Ms. Hauer: yes.

Mayor Hightower: There is no access for sidewalks and/or bike paths. Ms. Hauer: Development is only responsible for building within its borders. Councilor Burns: He is trying to look at this in macro view. Growth of the City is going to happen on that side of the tracks, so shouldn't Council be looking at services to that side? Ms. Hauer pointed out that the City has known about this situation since at least 1970. Mr. Kennedy stated this is something that should be addressed when an application for development is before them not during this annexation. The annexation is merely about a piece of land. Councilor Burns asks about this being a slippery slope. Ms. Hauer again says this was a problem way before now.

Councilor Neal: He asked where the projections came from. Ms. Hauer: PSU is the source for most of the data.

Councilor Perry: Somewhere in the report there is an average amount of time for mile long train to pass thru town...seems like it said 2-3 minutes. That doesn't seem like that is going to change. Ms. Hauer: The traffic engineer only looks at the worst case scenario. Councilor Perry: Did traffic engineer look at impact of when I-5 is shut down and all the traffic is going through Jefferson? Ms. Hauer: No as that is not a normal condition.

Councilor Myers: He had a question for the engineer. Looking at engineering report- on the water portion, it states sewer portion is 3 times the size and he wants to know if the water side is the same. Brian Vandetta, Engineer for Udell Engineering: It all boils down to 65 gallons a minute for household use and fire flows show adequate amount. No other questions from Council.

Mayor stated now would be the time for any comments for those in **favor of the annexation:**

Mr. Paul-14886 Parrish Gap Rd Jefferson OR- He is in favor of annexation. The discussion of trains is still there whether annexation is there or not. Is this a concern for the City-yes, does it need to be discussed at some point-yes.

Audrey Webster-170 N 8th St Jefferson OR- She is in favor of annexation as a new development or even possibility of development could draw internet providers from Scio side and hopes they consider that when looking at the annexation.

Paul Terjeson: - 934 S Main St Jefferson OR- When he annexed his property in he had to do the voter annexation twice. Lost once and then finally prevailed. He feels they are calling balls and strikes rather than looking at just the criteria.

Nancy Hamby- 664 Alder Ct Jefferson OR- It sounds like the concerns with EMS are concerning 5th and Greenwood. This was discussed years ago and has nothing to do with the current annexation. That is Council's problem to deal with and not the annexation's problem.

Chris Giffin-207 N Main St Jefferson OR- based on the information tonight it is the responsibility of this Council to vote in favor of the annexation as it will be good for the City in general.

Wendy Samples- 1261 Hazel St Jefferson OR- She supports the annexation as she has known lots of people who have wanted to move here. She has lived here for 22 years and there is nowhere for people to live.

David Kellogg: 724 Salamander Jefferson OR- He doesn't care if the annexation goes through or not, he just wants to have a Council that upholds the law not a Council that upholds only the laws they feel are right.

Linda Baker- 1287 Filbert St Jefferson OR- It appears the applicant has met all the criteria and the only winners here are the attorneys.

No other testimony in favor of the annexation. Mayor asks for 5 minute break -8:34 pm. During the break, Dani Daniels of J4J handed papers out to Council. She did not provide any copies to attorneys or for the record.

Meeting resumes: 8:41pm.

Mayor asks for any testimony from those that are **Neutral on the annexation:** none
Hearing none, Mayor then asked for any testimony from those that were **opposed to the annexation:**

David Coulombe- 456 SW Monroe Suite 1 Corvallis OR- Stated he had some points to make first; his points are procedural matters he wanted raised. 1. Motion to disqualify Councilor Burns: Refers to Columbia River Keepers. He heard comments of follow the law and he stated they should follow the appeal case. LUBA found bias and the court of appeals reversed the decision. He thinks they need to read the case before making any decisions. J4J feels the case does have merit. 2. The criteria for disqualifying under the JMC 12.72.120 states "...challenge shall be delivered by personal service to the City Recorder not less than 48 hours preceding the public hearing..." and if not received then it can't be considered. The J4J perspective says the entire hearing body not the entire hearing body minus a member. The soul burden of proof lays on the applicant not the staff, not public, only the applicant. With the outline prepared by J4J, which was not given to Carrie Connelly or to Tre Kennedy, Greg made copies for them to view. Mr. Coulombe stated in their material they have findings to show why a new decision must be made. The notion that residential development pays its own way is not true. Mr. Coulombe will provide studies to back his statement up. He then asks about the zone that was chosen for this area. Was it the densest zone they could have chosen? He feels this needs discussed now, not at time of development. With respect to following the law, according to Mr. Coulombe, state law is not the driving force.

Mr. Coulombe then asked for questions from Council:

Councilor Beyerl: He seemed to believe Mr. Coulombe was talking all about development and Mr. Coulombe stated Jefferson's code says development needs discussed now.

Councilor Perry: He asked if the property was already zoned. Lissa Davis: stated that the property has current Marion County zoning of Urban Transition and when annexed, it will be R1 (Residential low density). Councilor Perry: Once annexed in, can the property sustain R1 zoning and he believes the answer is yes. Mr. Coulombe: He wanted to know what the prohibition of upsizing the zone would be. Councilor Burns: He asked Mr. Coulombe if it was a fair assumption that Council should be looking at this in different light. Mr. Coulombe: Again asked if there was enforceability that zoning would not change. Councilor Perry: Yes, in the comp plan. Mr. Coulombe: The comp plan is a policy plan. (Technical difficulties with the microphones/recording at this time and was unable to capture the response/remarks from Councilor Burns and Mr. Coulombe.)

Microphones back up.

Councilor Myers: He remarked that if he understands Mr. Coulombe correctly, then the study put together by the applicant is insufficient and needs to be MORE in depth. Mr. Coulombe: Stated he is not a traffic engineer, but he is questioning the impact based on the number of trips of vehicles generated by the development; it's based on R1 zoning and he is saying that is inadequate. R1 is the lowest density and that is only the proposed zoning. He is proposing to Council that the R1 zoning does not have to stay that way. He believes that if they are looking at worst case scenario then the TIA (Transportation Impact Study) should be done at the highest density zoning not the

lowest. R1 zoning is the lowest zoning and will have the least amount of homes and the least amount of trips associated with each home. The study they were given shows the best case scenario, not the worst case scenario and he would like a larger, broader brush view for Council to consider so they are able to determine if what was provided is truly the worst case scenario or not.

Councilor Perry: Asked Mr. Coulombe what was the highest rating he was referring to? Mr. Coulombe stated that would probably be a question for City staff and Carrie Connelly interjected to say it's irrelevant; if a higher zoning were to come in to play, then another TIA would need to be done. At this time the applicant can't anticipate what that will be so they are required to show impacts of the proposed zoning. Before the zoning changes again or when applicant requests another rezone, then another TIA would need to be completed.

Councilor Burns: So the applicant says they want to come in as R1. Carrie: Correct. Councilor Burns: So then within the R1 zone, isn't there a range? Carrie: No, the applicant has analyzed what the maximum density allowed within R1 zoning for you to consider as the worst case scenario. What she is hearing from Mr. Coulombe is that the TIA actually had to analyze any and all potential zones for the property and that isn't possible, it isn't accurate, and isn't required by state law or the City's code. It isn't possible for applicant to predict what future zoning will do. Mr. Coulombe: He disagrees with her. The TIA rule has to do with transportation impact on transportation facility and has nothing to do with any of the other factors. It is all about transportation facilities and the impacts on those facilities. His point is that there are a number of factors that Council has to look at.

Mayor Hightower asks if there are any other comments on this and Mr. Coulombe stated he is available for questions and if there are none, then he will defer to the others at the table that want to have their three minutes of say in this. Mayor asked Council if they had any other questions and there were none.

Tre Kennedy: He wants, for the record, that all others at the table are identified and Mayor stated they have not spoken or been addressed yet. Mr. Kennedy said he was under the impression that they were going to speak and he just wanted to make sure that the record was clear about who is at the table with Mr. Coulombe. Hearing no other questions or concerns, Mr. Coulombe thanks Council for his opportunity to speak and defers to the others at the table.

Mayor Hightower: Continuing with testimony in opposition of annexation she allows the two remaining people at the table to have their turn to speak. From the audience, Dennis Persons asked where the neutral section for annexation was and the Mayor explained that had already been asked for and no one said they had any testimony. Mr. Persons was fine with that explanation and hearing continues with testimony from those in opposition of annexation.

Nathan Hightower- 664 High Ct Jefferson OR- He wanted to start off by making a quick statement that he is an accredited engineer and that he has worked for several engineering firms. Councilor Burns interrupts Mr. Hightower at this point to ask that someone in the audience be quiet as her side conversation is making it difficult for him to hear. Audience settles down and Mr. Hightower starts again with his testimony. His first point is the Assignment of Error in the LUBA decision. Item number 2 under Issues on Remand, the LUBA document states: "...the City must adopt more findings demonstrating substantial evidence in several particular..." He noted there had been quite a bit of conversation about this here tonight. One of the things that he was asked

to look at was if the master plan was used to contribute to the findings in the case and has it been observed or discussed as it does not appear to have been discussed from the City's standpoint. He saw nothing from City staff on this. He talked about how there are normally standards and they are either up to standard or they are not which would make them sub-standard. Are they sub-standard—perhaps; is there a plan to get them up to standard-no idea as he has not seen the master plan or any report on the master plan. The comprehensive plan does not address it directly. If streets are substandard, and can't be paid for, includes rail crossings, bike paths, sidewalks, etc., the question to Council then is it has been discussed about making all that look nicer, there is no report showing what that will cost or even estimated costs so how can the City apply system development fees to this. States there is a lot of information and questions in his submittal regarding this issue.

The second assignment of error-item 3- he then reads from LUBA report what the subject is- States this topic has been discussed at length. Claims that several photos and videos were submitted this afternoon in regards to EMS services and the traffic patterns at the north end of town at Salamander Rd. There are six items to discuss on this subject in their submittal. They test drove the routes that EMS would need to take and it timed out to be between 12-15 minutes in response time to get around the City in a normal vehicle if a train were on the tracks. The response time would be increased if someone took the proposed "back route" at Salamander Rd and had to get out and undo the four bolts at the railroad crossing.

The last item he wants to bring up is criteria number 5- the extent that the City relies on the projection of housing needs established at annexation has a positive impact on the City. The City must base its' decision on that. The overall impact of the annexation needs to be positive, but Council will see that the submittal is not positive and there has been historical evidence that shows that. Timer goes off as his time is up. He asks that Council look over the weaknesses, the opportunities and the threats associated with that as they look at approving the annexation.

Dani Daniels: 762 S Grice Loop Jefferson OR- Stated that she had submitted some materials earlier and noticed some things were not included and will be sure to provide them for the record. She will be giving a summary of some of the items she turned in earlier. Looking at traffic accidents using the TIA provided by the applicant. She believes the TIA is incomplete as it only shows statistics from January 1, 2011 thru December 31, 2015. However it does demonstrate in 2015 that there was a very sharp increase in traffic accidents resulting in injuries in 2015. She believes it is safe to say that accidents in Jefferson are on the rise and the analysis demonstrates the need for increased accessible and available emergency response from police, fire, and ambulance services. Emergency services are not adequate and police services are not enough compared to other cities. It is common knowledge the Jefferson does not have enough police coverage and the citizens of Jefferson are quite frustrated by this. Jefferson only has .6 officers per 1000 residents, well under other cities within Marion County. The Jefferson Development code states that the City shall only approve proposed annexations if adequate levels of urban services and infrastructure are available or will be made available without serious negative impact on existing portions of the City. The police service provider's pamphlet for 2016-2017 page 9 states that there is no plan in place to increase officers. Adding additional homes will strain the already strained police services. As for police, fire, and ambulance response times, the train stops on tracks at what is considered to be unacceptable amounts of time and has been known to block

the east side of Jefferson from the west side. The City's TSP acknowledges the potential for delayed response as a result of the train blocking the tracks in a number of places yet there are no plans and no funds to correct this problem. Again she states the Jefferson Development Code says the City shall only approve proposed annexations if adequate levels of services are available or will be made available without serious negative impact on existing portions of the City. Her conclusion is that the City cannot and should not pass the annexation based on these deficiencies with regards to emergency services.

Greg informs Council about the time and they need to motion to extend meeting an additional 30 minutes or the meeting will adjourn.

Councilor Myers moved to extend the meeting and Councilor Burns seconded. All were in favor and meeting extended 30 minutes.

Mayor Hightower states the meeting will continue with testimony from anyone else opposed to the annexation.

Tyler Webster- 360 Fairfield Ct Jefferson OR- He heard nothing about the school systems and wanted to know if that was included or not in the report. Lissa Davis: In the original public hearing last year, the Superintendent of the school district sent in a letter stating the school district could handle the children from any additional housing. Tyler Webster: So if based off of the R1 zoning, and there is potentially 65 houses built, there could potentially be anywhere from 1-2 children per home. That is about 65- 130 kids that could be added to the school district and states that many kids would be a huge strain on an already stressed system. As far as traffic on Greenwood, it's a nightmare now and it will only get worse at that end of town. The traffic study only does their timelines, but they don't have the reality as it is all based off of a computer system. The people who did the study don't live here; they live in Portland so how do they understand the real traffic issues we have here?

Dennis Persons- 1878 Talbot Rd Jefferson OR-He has pro, neutral, and opposition points to the annexation, but since he missed the other two opportunities to speak he will just speak about the technical part against annexing the property. His first question is on SB1573 and the development codes. He asked if SB1573 eliminated the development code for annexation #12.76.020 B.6 for the City that says "...the timeliness and wisdom of..." He then made some comment about this being a technical question and since no one answered said he would leave the question open. Lissa Davis stated she was not clear what Mr. Persons was asking and wasn't sure how to respond. Mr. Persons said it had to do with the last part of the annexation criteria under 12; there is a piece there that states the decision making process says the timeliness and wisdom of, so does SB1573 eliminate that. Lissa attempts to answer citing the Oregon Planning rules state that a decision needs to be made within 120 days of the application and Mr. Persons interrupts her and says it has to do with the criteria the Council needs to make and he would like this to be cleared up. Carrie Connelly: She states that she might be able to clear this up some. What the Council needs to consider and what the applicant needs to address are ONLY the criteria that was remanded back. Dennis Persons: In reading the LUBA decision, on page 14 line 19, the three criteria listed says "not limited to..."and he wants to know why it is limited to those 3 items. Councilor Burns: His understanding is that they are only to be addressing the items that were remanded back to Council.

Carrie Connelly: The part that Mr. Persons is quoting pertains to ex-parte contact. LUBA said disclosures are inadequate for statutory purposes and remand is necessary for the City to take necessary corrective action including but not limited to disclosure of ex-parte communications, opportunities for participants to rebut and a new decision on the merits of the application. This is all pertaining to the first assignment of error which is the initial basis for the remand to the City. Dennis Persons: He just wanted to address that issue. Also the development codes for R1 and some clarity; the County says there could be an issue with accessory dwellings and more issues and that is all he has at this time.

Keith Rude: 510 Delores Jefferson OR- feels there is a need for a fire station on south side of the tracks. Stopping to unlock a gate at Salamander Rd is unacceptable. Time is of the essence during an emergency. This issue has been there long before the annexation came about and he feels it needs to be addressed and taken care of now. As far as the letter from Fire Chief Zeilman, if he is stating that he has the equipment and the staff to service 65 more homes, then why is he talking about placing a bond on the November ballot? As far as police, he has heard for the last 6 months how the City has no money to afford more police. If more homes are put out there, the City is going to have even more crime than what there is now; therefore he would like to ask Council to deny annexation application on that basis. All of the stuff he has heard about traffic impacts, he only sees 3 outlets onto one street. Many of the streets need repaved and City has no money; the claims from the traffic study that the added cars onto streets that are already in need of repair will have no impact seems to be incorrect as he sees nothing but problems.

Richard Reid- 3242 Bluff Ave Salem OR- He is here speaking on behalf of Oregon Communities for a Voice in Annexations. They have helped communities across the state for the last 20 years or so to get the right to vote on annexations. He wanted to point out that SB1573 is a law that citizens can choose to obey or they can follow their conscience. Other cities chose to follow their conscience and their oath to uphold the Oregon Constitution that prohibits the Oregon Legislature from amending charters as SB1573 has done. The law has been taken to court and is now in appeal. In regards to the staff report- he thinks the report is a very fine report and well detailed and staff should be accredited for it; however he did wonder why rail incidents were not considered separately from transportation facilities. Under fire, the concern is how Jefferson Rural Fire District can stretch its budget to cover current situation and the additional homes and same with the police services.

Mayor Hightower then asks for any other testimony in opposition of the annexation. Hearing none, she moves on to the next step which is the Staff Summary.

Staff summary:

Carrie Connelly: States that her responses were provided on a case by case basis as questions were asked or if issues arose that she could address and hopefully she answered the concerns accordingly. She then asked if there were any other questions for staff.

No other questions were raised.

Carrie Connelly: States that the only other side bar that she has, as it pertains to one of the basis for remand is the ex-parte contacts and she is attempting to assure that they have an impartial tribunal. She then addresses Mayor Hightower and notes that one opponent of the annexation has same last name as the Mayor does and gives the Mayor

the opportunity to speak to that issue. Mayor Hightower states they do not speak on this matter; they have no communication what so ever regarding the annexation. Mayor states that when she goes home she leaves her Mayor title at the door and they are just husband and wife; they do not discuss business with each other. She states it is the same when she goes to work at the school district; she takes her Mayor hat off and becomes school district employee and does not discuss City business there. Due to legal issues and the City Council, she does not discuss anything with her husband and she has no idea what he is doing on his position. He does work from home as he has a home business. Carrie asked the Mayor if she was able to vote or had to vote to make or break a tie on this annexation, would she be able to do so unbiased and based on the record before her and Mayor stated yes.

Rebuttal by Applicant:

Tre Kennedy: He would like Mr. Vandetta and Ms. Hauer to address some of the key issues first and then he will finish up.

Mr. Vandetta: Someone said that the TIA analysis did not discuss the worst case scenario and he would argue that the TIA was performed in line with the statute. The zone that is being applied for is R1 and that zone was addressed in the TIA. If a different zone were to be applied for later down the road then a different TIA would need to be done based on that zone. Based on what's being requested today with this annexation and the current zone today, the correct analysis was performed in line with the current OAR statutes. It has been repeatedly brought up that they should be looking at potential impact to services, and we have addressed every criterion in the development code at the time of annexation.

Ms. Hauer: The J4J attorney was concerned that they had not addressed development issues and her response was that they had not designed a sub division yet. There is no specific sub division plan at this point and that would be a separate set of criteria for that. The land needs to be annexed in first and then a plan for development would need to be made. She reiterates Mr. Vandetta's statement about there being one set of criteria for the annexation that they are discussing tonight and then there would be a second set of criteria that would need to be met at the time of development especially if for some reason anything other than an R1 development were to be built. They believe they have done their due diligence as they have covered all services listed in the LUBA opinion and provided the evidence. Mr. Hightower was asking about the master plan and she believes he was referring to primarily the transportation standard. That would be the City's transportation system plan and she believes the City adopted one about 2015. According to PSU or even Wikipedia, the average per capita household number is about 3; that does not mean that every household will have children as some may be 3 adults or even 3 grandmas so it does not mean that more children will be immediately added to the school system if at all. Mr. Persons asked about the timeliness and wisdom and she believes that is criterion 6 which was NOT one of those to be found defective and therefore not a subject they looked at. She believes they have covered all aspects stated by those that were opposed. She then turned it over to the legal department for Mr. Kennedy to wrap up.

Mr. Kennedy: He had a question for Councilor Burns: stated that Councilor Burns made a point a couple of times that he was looking at things in a macro view and J4J attorney states how we need to look at potential development. Mr. Kennedy states that is absolutely wrong as that is not what they look at. What needs to be looked at are the factors that have been set out and you find the potential development factor anywhere

within the City development code. The idea that there is some sort of illusory promise which is a legal term for a fictitious promise or one that can't be enforced is flat out wrong. The Council holds all the cards because not one shovel of dirt is going to be moved on that piece of land until this Council determines if the development or sub division is appropriate for the property that was annexed. So the idea of this illusory promise or that the Council will lose control of what will be allowed on that annexed land is flat out wrong. It is also flat out wrong that Council needs to look at the "big picture". The "big picture" is that the City has an urban growth boundary, the City has an application for annexation and you have specific criteria that have been overwhelmingly supported with evidence and NOT persuasion as Mr. Coulombe would suggest. Persuasion means he would need to change Councilor Burns' mind that this is a good thing for Jefferson and Councilor Burns should vote for it under the big picture umbrella and that is not the standard. As the applicant, they need to provide evidence to satisfy each one of the criteria that is set forth in the development code that was adopted by the Council. The Council then needs to decide if the evidence presented meets each and every criterion in the development code, not some illusory, fictitious or potential development sometime in the future. Council needs to apply the factors that are set up through a system that is built to expand properties that provide housing as needed for the City of Jefferson and to do your job you need to limit your consideration to only those factors.

Councilor Burns: Asked to comment on Mr. Kennedy's views and stated it seemed like Mr. Kennedy wants it both ways. We have been talking about all these studies that were done such as traffic studies, we have talked about LUBA coming back at us with problems having to do with EMS access due to trains and all the presumed development. Wants to know why LUBA sent it back if they are just looking at a piece of land to annex into the City. Mr. Kennedy: He reminds Council that all they are deciding on at the moment is IF it could be developed in the future. There would be no reason to annex the land if you couldn't show that the land was not able to support any type of growth in the future. Councilor Burns: So you want Council to consider this as an act of annexing a piece of ground so that it becomes part of the City. He also believes it changes the tax status of the person who owns that property. If we are just talking about annexing a piece of ground, then why are we talking about traffic studies, schools, EMS issues? He again states that it sounds to him that Mr. Kennedy wants it both ways. Mr. Kennedy: No, that is not what he is trying to say. The issue is very clear. The land is within the Urban Growth Boundary, the City has factors set up so that there can be development in the future. However, before development can happen, Council needs to pass the annexation of the land under these standards and when it gets to the point of development then Council will need to approve that based on another set of standards. All Council needs to look at right now is whether or not this land could be developed in the future. Ms. Hauer: She interjects and states to Councilor Burns that she believes if he were to look under criteria 3, he might be able to find the answer to his question. It states that the City needs to make the finding that there is an adequate level of services and infrastructure. In order to answer that we have gone to those providers and asked them if they believe there is an adequate level of service or can it be made to be adequate by expanding what is already there. Councilor Burns: states he will back away from the subject. Mr. Kennedy: Councilor Burns started out making a declaration about ex-parte content, and based on the similarity of the content, these were written by someone else for you. As part of that, you stated that you could stick to the criteria.

Now you are saying, basically you have decided on something other than the criteria...Councilor Burns interrupts to say that is not the case, he is merely trying to understand how to approach this particular issue, not make a decision. He doesn't want Mr. Kennedy to put words in his mouth.

Councilor Myers: He would like a clarification. Directs question to Carrie Connelly: when the remand came back, it identified 3 areas: ex-parte, services and he wasn't sure what the 3rd area was, is that correct.

Carrie Connelly: Correct, there were certain criteria that needed additional findings based on evidence in the record. Cites 12.76.010 (B) (3-5) and summarizes what the criteria remand was. So it was ex-parte, findings-under findings there were 3 criteria and each of those criteria had a couple of areas that needed to be looked at. Councilor Myers: Asked if that was all they were to look at and Carrie said yes. Councilor Myers stated he just wanted to make sure that point was very clear as they seem to be going down some roads that are not relevant.

Mayor Hightower: States the meeting appears to need to go longer and asks if Council is going to motion to continue or adjourn.

Mr. Kennedy: For the record, he would like to suggest keeping the record open for minimum of 7 days and continue the hearing as there is still some materials he has yet to receive particularly from Mr. Hightower. General discussion regarding number of days to keep record open follows.

Carrie Connelly: She believes there were two things handed in during the hearing tonight, so those will be in the record and distributed. States Council needs to discuss the 2 options- one is a request to extend the hearing and one is leaving the record open.

Councilor Perry: Stated he thought they were discussing extending the time of the meeting as the prior 30 minutes is about to expire and Greg and Councilor Beyerl both said yes.

Councilor Perry moved to extend this meeting an additional 30 minutes and Councilor Beyerl seconded and all were in favor at 10:25 pm.

Mr. Coulombe: Wants it noted for the record his procedural objection. It went from applicant giving rebuttal and now it seems it has moved into procedural matters that are outside of rebuttal. If you are talking about procedural matters, what he heard was they would be required to keep the record open for 7 days and J4J objects as State law requires that at the initial hearing and this is not the initial hearing so there is no requirement to keep the record open and not required to continue as a matter of law.

Carrie Connelly: That is correct, but to be fair she recommends record stay open as some of the material has not yet been reviewed. At the very least she recommends the record remain open if the hearing is not continued. There were a lot of issues raised this evening and could potentially best be vetted by a continued hearing but that is not her choice.

Councilor Perry motioned to keep record open an additional 7 days. Carrie interrupts to say she does not believe it needs to be 7 days.

General discussion ensues over how many days are needed by parties involved. Lots of confusion between continuing hearing and keeping the record open.

Carrie Connelly: Council needs to first decide if they are going to continue the hearing and then decide about the record. Councilor Myers believes they have to continue the hearing. Councilor Beyerl does not, he believes only the record should be kept open for consideration of the new materials presented tonight. More general discussion on clarification about what each Councilor is attempting to say and /or mean.

Mr. Kennedy: He is trying to understand what Council is allowing. If they are allowing anybody to supplement the record, then as the applicant he still has an opportunity to rebut. So there will be a rebuttal period past the time you are keeping the record open for evidence. Then there will be a rebuttal that does not provide any additional evidence just in response to evidence already submitted.

Carrie Connelly: That is correct.

General discussion again ensues based on who gets to do what and the number of days needed by each party. Lots of dates being tossed around and confusion ensues.

Carrie Connelly clarifies on some dates and timelines.

Councilor Burns states he wants to be involved in the voice of Council.

Councilor Beyerl: We seem to be having a problem with a Councilor who is leaving but still expects to have a full voice in the decision, this is an unrealistic expectation.

Councilor Burns: States he is a duly elected Councilor until the day he leaves, and he has every right and privilege as a Councilor to participate in the doings of this body.

(Lots of angry side bar conversations and comments from the audience, Councilor Beyerl attempts to get them to calm down so Council can continue conversation.)

Councilor Myers: First hearing there was discussion on the quickness that a decision was made and now he is hearing hurry on this decision. There was a lot of information tonight and will continue to be more information coming in and a concern was raised about time to read the information and he feels they need a couple more days to be able to read and digest the information before making a decision. There is also the time needed for rebuttal and staff also needs time to prepare the findings. The last thing he wants to see is this to come back again from LUBA because Council did not provide adequate time. Councilor Perry: asked if Councilor Myers was recommending a timeline of 7 days for record to be open, 3 days for rebuttal and findings, and 7 days for decision. Councilor Cheney: He thought he had heard 5 days for rebuttal and findings, excluding weekends. Councilor Myers stated he heard both being proposed. More general discussion on time frame they think is needed.

Carrie Connelly: She reminds Council that a final decision HAS to be made by August 10th and that is the farthest out Council can go.

Mr. Coulombe: Adds that the proposal for the 26th of July for deliberations works for J4J and seems like the most impartial process to allow a full body to decide, not a contrived process to eliminate a Councilor.

Carrie Connelly: Apologizes, but states she needs time to draft defensible findings, so this is not contrived.

Mr. Coulombe continues to disagree with Carrie about time needed for rebuttal and time needed for findings. Councilor Myers: to Mr. Coulombe- you were just sitting at the table stating you did not have time to review some material that was presented and therefore couldn't respond to it. Mr. Coulombe: I also did not ask for any time either. More disagreement follows.

More disagreement follows.

Carrie Connelly: Stated she has a proposed resolution. If there is no request to keep the record open more than 3 or 4 days, closing the record on the 17th, then give the applicant 5 days for rebuttal closing on the 21st, and she is ok with counting weekends and working weekends which would mean that she could have the findings prepared by the 26th of July. However, she wants to point out that it's going to be staff's view of the evidence submitted. The Council may look at that and disagree with her interpretation

of the recommendation and the findings so that does not mean that there WILL be a decision on the 26th. It means there COULD be a decision on the 26th.

Mr. Kennedy: He states objection to the 3 days ending on the 17th because potentially he could look at everything and need to get additional evidence which would require him to contact other people. Carrie agrees with this statement.

Councilor Beyerl: He is recommending closing record in 7 days, then 5 days for rebuttal (excluding weekends), and 7 days for staff findings-- means weekends included. Carrie: So this would mean a meeting on August 3rd. Mr. Coulombe: He feels that is a disservice to the people not to have a full Council. Carrie: She is far more concerned with having a defensible decision that has been fair. Mr. Coulombe continues to disagree; Councilor Beyerl states he has made a proposal and would like to know Council's decision.

Councilor Burns: It seems to him that since they are all so disagreed on this that the only way to settle it is by a vote. (Laughter from audience)

Councilor Cheney: Clarifies the dates and that voting would happen at a special meeting on August 3rd. Councilor Beyerl states that is what he proposed, as it gives everyone the time they are wanting to prepare. Councilor Neal: He thought they had originally said to leave the record open until the 20th, rebuttal on 24th and then have vote on the 27th with the full Council. Carrie: Apologizes, but that would only give staff two days to do the findings and if you have a meeting on the 27th, you are still missing a Councilor as of 5 pm based on the resignation he turned in. Councilor Burns said the meeting could be moved to 9am on the 27th and again laughter from audience. Carrie: All of those are options.

Councilor Myers: The biggest challenge he hears is time for staff to prepare the final report. He has heard various dates and timelines; he just wants to make sure that everyone has adequate time to fully prepare, bring what they want in for the record, and that staff has time to prepare. If we rush to judgement then we are going to get hammered. Councilor Burns: Then there won't be a full Council during the decision making. Councilor Cheney asked if 7 days was reasonable. Carrie: 7 days is reasonable, it's the statutory amount of time provided at the initial evidentiary hearing. This is not the initial hearing so the time could be shortened but then Council could be opening itself up to arguments later that there was not enough time to review and prepare.

Councilor Beyerl: motioned for 7, 5, 7 timeline and Councilor Perry seconded. Mayor Hightower calls for any discussion.

Councilor Burns: Feels it is clear he is outnumbered, so he will just keep quiet and let the chips fall where they may.

Councilor Cheney: Would like dates clarified again. Carrie: The record will close the 20th (7 days counting weekends), (5 days—not counting weekends) rebuttal is due the 27th of July, and 7 days later, counting weekends, the Council will hold a special meeting to consider draft findings and a possible vote on August 3rd. She also points out for the record that the hearing is not yet closed, it has been continuing through this discussion. Councilor Cheney: so the 3rd would be a special meeting. Carrie: yes, it would be a special meeting, then if there are additional issues that the Council has—either questions of staff or directing staff to create a different decision—there is still time to do that before the August 10th deadline date.

Councilor Burns: Asks if this whole process could be put on hold until a new Councilor could be put in place and Carrie states she does not know what their process is and a final decision MUST be made by August 10th.

No other discussion, Mayor calls for vote individually:

Councilor Perry: Aye
Councilor Neal: Aye
Councilor Cheney: Aye
Councilor Burns: Abstain
Councilor Myers: Aye
Councilor Beyerl: Aye

Carrie Connelly: She now recommends stating that the record will remain open but to close the hearing. All agree. Hearing closes at 10:18 pm.

Many (Councilors and audience) start to leave, but are reminded that the meeting is still in session as there is still business to be taken care of. Room settles down.

- IV. Approval of Accounts Payable-1st half of July:
Councilor Beyerl moved to approve and Councilor Myers seconded. All were in favor, passed unanimously.
- V. Visitors: None due to hearing and length of meeting.
- VI. Council Comments: Councilor Perry wanted to remind everyone about the “meeting” before the concert at the Conser house...more of just a brainstorming session on what everyone would like to see happen to the building once the Library moves out and the restoration/improvements have been done.
- VII. Calendar: Councilor Myers asked Greg about Mary Camarada from DEQ for August work session to discuss the Oberson property as well as the property on 5th St. and Greg said yes.
- VIII. Adjournment: Councilor Beyerl moved to adjourn and Councilor Perry seconded. Meeting adjourned at 10:25 pm.

MINUTES APPROVED this 24th day of August 2017.

Cyndie Hightower, Mayor

ATTEST:

Greg Ellis, Interim City Manager/Recorder