

**CITY OF JEFFERSON  
SPECIAL SESSION  
August 3, 2017  
6:30 pm**

Council Present: Walt Perry, Brad Cheney, Cyndie Hightower, Mike Myers, Stan Neal, Dave Beyerl  
Council Absent: NONE  
Staff Present: Deanna Donato, Lissa Davis, Jeff Buskirk  
Guests: Carrie Connelly-Speer Hoyt Law Firm

**I. CALL TO ORDER/FLAG SALUTE:**

Mayor calls meeting to order at 6:32 pm followed by flag salute.

Mayor then read statement regarding rules of the Special Session and that no visitors section would be allowed as this was the time for Council to review the information presented in the applicant rebuttal and in the staff findings; then discuss and ask staff questions if needed before coming to a decision.

**II. COUNCIL DELIBERATION:**

1. Hamby family Limited Partnership Annexation, Tax Lot 103W 12 00908, Remand from the Oregon Land Use Board of Appeals (LUBA); LUBA case No. 2016-084, on City Council Approval of ANX 16 -01/ZC 16-01.

Following the statement sheet prepared for her, the Mayor continues on with Council Deliberations. First is the Conflict of Interest and Bias statements from Councilors; all conflicts of interest and prejudgment bias with regards to the proposal or Applicant-whether financial or personal or they are unable to render a decision based solely on the record. Councilors may only participate in these deliberations and decisions if they have no actual conflict and can do so without undue bias either for or against the applicant. During the hearing Councilors submitted conflict and bias information in writing for the record and need to be stated again for the record. Mayor then asked Council to restate any conflicts.

**Councilor Cheney:** He announced he had a potential conflict as his property is located near the annexation. Councilor Neal announced his potential conflict also was due to his property being located near the proposed annexed property. No other conflict of interest statements were made.

The Mayor then moved onto any disclosure statements regarding pre-judgement and bias informing Council to state for the record if they had done so previously. None were stated.

Mayor moved on to ex-parte contacts. Statement she read pertained to any new ex-parte contacts since the last meeting that Councilors may have had.

**Councilor Neal:** He handed in for the record a disclosure form that stated approximately two weeks ago he had read an article in the Democrat Herald regarding the possibility of a container center being built in Millersburg. Councilor Neal admitted to calling and having a phone conversation with the

person in the article. The project, Rubber to Rails - Rails to Rubber, discussed transporting products more efficiently and how money was procured. He said he asked the representative about potential for rail traffic increasing through Jefferson and was told it seemed likely. Carrie Connelly: Asked Councilor Neal if he believed this conversation was applicable to this annexation and he said no and did would not consider it when making a decision on the annexation.

Carrie Connelly then stated that the applicant attorney, Mr. Kennedy, was not there so she asked the applicant, Nancy Hamby, if she wanted to have the record opened to consider Councilor Neal's statement as additional ex-parte and have time for rebuttal. Nancy said no as she did not think it was an ex-parte conversation

Carrie then asked the J4J representative, David Coulombe, the same question. Mr. Coulombe: Asked for some clarification regarding Councilor Neal's statement. His understanding is that Councilor Neal has indicated he will not be using that information when making his decision and Carrie stated she understood this to be correct. Mr. Coulombe then stated then there would be no reason for him to respond to this as long as he is indicating it won't be brought up. Carrie thanked Mr. Coulombe.

Mayor moved on to the Staff Report. She asked for any updated staff reports.

Carrie Connelly gave the staff report. She stated the report before them is a rather lengthy draft of the final order on remand. Staff had 7 days to put it all together, prior to that there were 7 days for the applicant rebuttal and prior to that the record remained open for 7 days so all participants could submit evidence for the record. The goal of the draft of the final order was to encompass all of the submittals. She stated the draft is long so she will touch on the high points of the report. She did want to point out a response that was added in regards to a query from LUBA during the remand. That query had to do with whether or not a sufficient percentage of owners consented to the request of annexation and the draft finding was that yes, 100% of owners had consented.

With regards to the first criteria that needed addressed based on the LUBA remand was if an adequate number of urban services are available or will be made available without significant negative impact to the existing portions of the City. There were a couple of new legal additions to the findings as well as some factual additions. Reports show, and LUBA interpreted and is satisfied with the term available to mean these services can be readily extended. LUBA has found that to be met when a subject parcel is surrounded by developed property; that is the case here. The materials submitted are clear and show that the property is currently served by services such as MCSO and fire within their jurisdiction; annexation will not change this as it will still be within fire district jurisdiction and City has a contract with MCSO. As to transportation, the TIA shows a level of service rating which exceeds that required by the City's adopted TSP. Rail crossings – the City has an outdated TSP so that is what the City currently has in place and we have to hold current applications to what is in place at this time. If and when the City decides to update the TSP as the current one is outdated, then we would need to go through the amendment process to amend current TSP and have it acknowledged. Library and electrical services both provided reports that

services are adequate if and when property is annexed and developed. Interesting twist that she found within the City's Code is the statement "without serious negative impact to existing portions of the City"—that consideration drops out if funding mechanism in place, which places the primary economic burden for the service on that subject parcel and to a great extent she believes it can be argued that the City has done a good job on trying to impose the costs of growth on properties, on the growth itself, by adopting SDC's.

Final point raised by applicant in his rebuttal materials is the opposition and testimonies of individuals against annexing property are viewing the property as developed. Right now there is no development application all you have is an annexation application and a rezoning request; Council's consideration needs to be limited to bringing in that parcel and CAN it be served if it is developed not HOW will it be served when a development application comes in. The how portion comes in when there is a development application in front of Council. LUBA has decided that when a property is surrounded it CAN be served.

Other criterion to be considered in final order remand from the opposition was if sufficient planning and engineering data was available. All reports and studies have been completed and show that there are no significant unresolved issues. There were a number of specifics called out by LUBA and in the remand order it currently points out that no opposition testimony pointed out any ongoing studies which would impact the annexation criteria that would need to be completed before the property could be brought in. Opposition testimony indicated they would submit additional engineering studies if the record was left open. The record was left open for 7 days and no new engineering studies were submitted that would contradict the Applicants TIA. Since there is no current development application at this time, no specific engineering or design plans can be prepared nor are they required.

Carrie moved on to the next criteria--overall impact. Overall impact will be positive on aspects of the City. She stated this is a very subjective criteria as what is positive for some can be negative for others. The oppositions submittals also show it could be positive for some and negative for others. Council's job is to weight the positives and negatives, even the opposition testimony indicating the positives and negatives need to be weighed. She reminded Council that only the adopted comp plan and development code provisions can be applied to this application. Council cannot pick and choose or wish current adopted standard were amended; only the application requested can be considered. No development application has been submitted so that cannot be considered at this time. Carrie again points out funding mechanisms are in place and the growth projections that were in the original City decision that was appealed to LUBA and remanded back were actually accurate. Growth projections indicate the need for 1,810 new homes within the next 15 years. The Applicants materials prove that this is one way for Council to meet the City's identified residential housing needs.

Carrie pointed out that after deliberations, depending on what Council decides, if this order or a different one is approved to approve the application, time will need to be set to amend ORD 695. Deadline for decision has now been set for August 17, 2017. This time could be set for next regular meeting on August 10<sup>th</sup> or another Special Meeting could be set before the 17<sup>th</sup>.

Carrie then asked if there were any questions she could answer regarding the draft final order before them.

**Councilor Neal:** nothing to do with ex-parte. His understanding is even though LUBA was questioning concerns about emergency access and it has been an issue for 40 years, he has two questions. First question is if that railroad crossing access gate on Weid/Salamander Rd is a viable alternative access road for EMS to get through when a train is blocking tracks or is it not viable. His second comment/question: He also understands that even though there is a problem and it has been recognized it is really not a criterion to look at as it doesn't put anybody else currently in the City at risk any more than what they already are. Carrie's response is that is the conclusion she has proposed for Council in the proposal before them; however she stated that each of them would need to come to their own conclusions. As to his first comment/question, Council can only consider what is already in the record. Council has all seen the videos and written testimony and she did not believe this to be a viable alternative access road. She believes this to be a red herring issue. The more important issue is are the available accesses going to be impacted. Again states that is an issue for Council to draw its own conclusions on. She does note that the City TSP does consider it to be an alternative access. Stan said his comment is more to the aspect that the TIA does not appear to show that to be a valid access. He thinks this should at least be straightened out for the record but may not be anything Council can resolve.

**Councilor Perry:** He had a question regarding the source of information about emergency services response time. Is Council to take from what the TSP states or is it straight from fire department/sheriff now. Carrie: What Council has in front of them now is a letter from fire department that said they could serve this parcel. It does not discuss emergency access at all; it states they can serve it as is and if developed. Councilor Perry: Asked if staff has gone back and asserted this question to the fire department. Carrie said no and Lissa also said not since the letter submitted at original hearing. Councilor Cheney asked Lissa if she was referring to the letter dated May 15, 2017 and Lissa said she was referring to the letter back in 2016 when it was approved the first time by Council.

No other questions in regards to staff report. Mayor then moves on to discussion by Council.

#### **DISCUSSION BY COUNCIL:**

**Mayor Hightower:** Her concern, after viewing the videos and documentation entered into the record, had to do with the fire department needing to cross the tracks but they are blocked and then fire department has to take another 10 minutes to go all the way around. The train has blocked intersections before up to an hour and a half.

**Councilor Beyerl:** His response to the Mayor is the annexation isn't going to change that issue. The train has been a problem for long time, and any addition of property isn't going to change that fact for anybody within the City currently. Mayor: The TSP was written in 2000. Councilor Beyerl: Yes, but what he is saying is if the tracks are blocked and there is a delay currently or in the future it's still blocked and the annexation doesn't change a thing.

**Mayor:** So when Luv's comes in and brings in more truck traffic that will be

an issue also. What if in Millersburg they do put in a truck... Councilor Beyerl interrupts the Mayor to state that has no bearing on this annexation.

**Councilor Perry:** Asked if Jefferson Fire Department has an IGA with surrounding fire departments? Councilors Beyerl and Myers both said yes.

**Councilor Perry:** Then if Jefferson Fire Department sees that the train has been there for an hour and a half, the first thing fire department would do is call the other stations and increase response time by approximately 6 minutes. Councilor Cheney: Notes that Councilor Perry may be correct on that, but believes that Council should have been given that information. Only thing he has seen while on Council is one letter from the Jefferson Fire Department that states the JRFD is equipped and staffed to handle up to 70 new homes on the proposed annexed property. This letter does not address any other issues. Councilor Beyerl: At this time, any information we get isn't going to change the response times. It is what currently exists for this City.

**Councilor Cheney:** So if someone dies because response times are delayed because the City annexed in more property to add more homes knowing the current situation with blocked tracks, is the City liable? Councilor Beyerl: Council needs to deliberate on what has been presented, the arguments at the hearing, and facts before us and entered into the record. It is too late to add more information.

**Councilor Neal:** Question to Carrie about liability and Carrie says not to her perspective it does not. His other question is if annexation doesn't put individuals who currently live within the City at any more risk then it cannot be considered a concern or a lack of meeting the criteria that LUBA would like to see.

**Carrie:** Wants to talk about what LUBA remanded this for. There was evidence addressed in City findings; it was remanded not because it said you don't have adequate EMS, it was because when presented with evidence that you might not have adequate EMS, the City didn't talk about that and simply concluded that there is adequate service without talking about whether or not there was an issue with EMS. LUBA did not tell you there were inadequate services, only that it was not discussed. Councilor Neal: he thought LUBA was concerned about the EMS; the problem is there and has been recognized and it has been a problem for years. So is putting more people at risk fair? Carrie: That is for Council to decide. She does not believe it is fair to ask current applicant to fix the problem that has been there for years.

**Councilor Myers:** The specific items we are to be reviewing are itemized out on the remand. The what if's –we can't ask that of any applicant, as that puts anyone in a losing situation. Need to deal with issues and facts at hand with the rules/codes at hand and are currently in effect. By looking at the "what if's" we would be opening the door for any applicant to challenge the decision. The language is VERY clear on what we are to judge this on. Councilor Neal: asked Councilor Myers: you wouldn't consider putting more people at risk due to delay in EMS as a "what if" when it's more of a reality. Councilor Myers: The reality today is the same problem it was 40 years ago and it will not change tomorrow. If that was that big of an issue, then why did we buy our homes there and live there. It was known then just like it is known now. We experience it when i5 shuts down. We don't control that. Councilor Neal: Most people aren't aware of the situation with the tracks is his assumption. Should any consideration be given to this is his question. The other thing he is concerned with is EMS issues. His understanding is that several criteria sent

back by LUBA as they wanted to show there was discussion on this rather than the City just drawing a conclusion there was adequate services. The other one is EMS in regards to police. His understanding is it should show substantial increase of police. The Applicant did address this, but his concern is where MCSO basically says they will extend coverage to that area but did not state if it would be adequate coverage in the area or if it would cause any detriment to other areas of the City. Police coverage is already a point of frustration. He has seen no evidence other than that letter stating they will extend coverage. No other proof to convince him that coverage would be adequate or substantial.

**Councilor Myers:** Page 13 final order of remand. What he is hearing is Councilor Neal wants a letter from MCSO stating adequate level of services to Jefferson; by what criteria...city, county, applicant? Adequate level of service- you may not be satisfied by it and others may not be satisfied by it, but in the staff report for final order of remand, it is expressed very well.

**Councilor Neal:** In Hamby rebuttal it was mentioned by Applicant and statement was there was a letter from MCSO stating service was adequate and would not affect existing parts of the City in a negative way. His point is the Sheriff didn't say that. Never saw statement by Applicant that the letter proves there is adequate coverage and will not affect adversely.

**Councilor Perry:** MCSO states they WILL cover the annexed property. He then reads the statement from MCSO. This is also in the contract.

**Mayor:** Not enough police has been brought up.

**Carrie:** First off, she wants it noted that is not in this record. Councilor Perry: continues with what he would like to see, but it is not a reality because we have to pay for it. He would like to see enough guys working at the fire department to staff this station and a substation, but that's not going to happen; at least not in the immediate future. If someone is having a heart attack, are you going to stand there and do nothing if EMS can't make it over the tracks, or are you going to put the person in the car and get them help? It only takes 14 minutes to get to Stayton from here.

**Carrie:** Again states discussion and conversation needs to be kept to what is in this record.

**Councilor Beyerl:** The courts have said SB1573 is the law, it's still the law, and this body has sworn to uphold the law.

**Councilor Neal:** SB1573 is the law and is interpreted in various ways and the Council has the responsibility to vote for the people even though the public doesn't get to vote.

Mayor asked for any other discussion. Hearing none she asked for a motion. Carrie stated one page of the staff report had sample motions for Council to consider.

Mayor reads more of the statement that said a motion needs to be made, seconded and adopted for the findings, the decision, and any conditions of approval.

**Councilor Cheney:** Asked Carrie: His understanding was that conditions of approval were not available to them was correct. Council will either approve or deny. Carrie: Based on the deliberations Council has had tonight, that is correct.

**Councilor Beyerl moved to adopt the Final Order on Remand, and direct staff to prepare an ordinance effecting annexation and rezone approval. Councilor Perry seconded.**

Mayor asked if there was any discussion. Hearing none she called for a roll call vote:

**Councilor Beyerl: YES; Councilor Myers: YES; Councilor Perry: YES; Councilor Cheney: NO; Councilor Neal: NO. Mayor states because she has difficulty in the application and given all the information provided her vote is NO.**

**Carrie:** In the event of a tie vote, which the Mayor is entitled to make or break a tie, based on charter section 17, the vote is essentially a denial. So currently you have a denial and no supporting evidence/findings to support the denial. Those who voted in favor of the annexation need to support the City's decision which is to deny the annexation. It puts the City in a better position if you actually have findings to stand upon. If it goes to LUBA for appeal and no findings to stand on then it is essentially an automatic remand. Stated it would be helpful to staff if Council were to work as a whole behind the decision that was just made to direct staff, schedule meeting for findings to be considered and move forward to put it into place.

**Councilor Myers** moved to direct staff to draft findings supporting denial. Councilor Perry seconded.

**Mayor called for vote. Councilor Myers: AYE; Councilor Beyerl: NO; Councilor Perry: AYE; Councilor Cheney: AYE; Councilor Neal: AYE. Motion passed.**

### III. COUNCIL COMMENTS:

Carrie stated her goal is to have findings back to Council by the 10<sup>th</sup>, which is Council's next regular scheduled meeting. Carrie asked if Council wanted her to present findings at that meeting or to just have staff present the findings. **Mayor:** She thinks Carrie should give information to staff to present and asks Council what their thoughts are. Councilor Beyerl: States he believes the decision just set them up for more legal bills. Councilor Perry: He believes this is not going to go away, and if it goes away then justice has not been done. Councilor Myers: He just wanted to know if Council wants attorney to come back or not. Councilor Perry: No need. Councilor Cheney: no; Councilor Neal: yes; Councilor Beyerl: no; Councilor Myers: no. Mayor states after the vote that legal counsel will not be here on the next meeting to present the findings.

### IV. ADJOURNMENT:

Mayor asks for motion to adjourn.

Councilor Beyerl moved to adjourn and Councilor Myers seconded.

Meeting closed 7:32 pm.

**MINUTES APPROVED** this 24<sup>th</sup> day of August 2017.

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Cyndie Hightower, Mayor

**ATTEST:**

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Greg Ellis, Interim City Manager/Recorder