

August 30, 2010

The Chehalis city council met in special session on Monday, August 30, 2010, in the Chehalis city hall. Mayor Ketchum called the special meeting to order at 5:03 p.m. with the following council members present: Terry Harris, Dr. Isaac Pope, Bob Spahr, Daryl Lund, Chad Taylor, and Dennis Dawes. Staff present included: Merlin MacReynold, City Manager; Bill Hillier, City Attorney; Judy Schave, City Clerk; and Bob Nacht, Community Development Director. Others present included: Airport Board Members Dan Foster, Frank DeVaul, Jerry Zabriskie, Ken Sabin, John Spears, and Robert Schroeter; Allyn Roe, Airport Manager; Ladonna Neiser, Administrative Assistant; Commissioner Ron Averill; Attorney J. Vander Stoep; and Bob Montgomery, Hydrologist/Engineer. Attorney Don Marcy participated telephonically.

1. **Airport Levee Discussion.** City Manager MacReynold reported, with regards to the Federal Emergency Management Administration (FEMA) mapping issue, the partners had been looking at a wide range of possibilities on how to approach the issue of the proposed floodway maps. He noted, in discussion over the past few weeks, one thing that came up was the idea of applying for a permit to raise the airport levee to meet the 100 year flood level. City Manager MacReynold reported the Chehalis City Council met last week to talk about the feasibility of requesting the Airport Board to consider applying for a permit to raise the levee, and doing it as soon as possible. He noted the council felt it was clearly a possibility and asked that a meeting be set up to discuss it with the Airport Board.

J. Vander Stoep reported the current preliminary maps indicated the airport would continue to be in the floodway, which would do tremendous harm to the development of the city and airport. He talked briefly about the current proposed Twin City Corps Levee Plan, which included 11 miles of levee around the airport. Mr. Vander Stoep indicated the hydraulic model showed if they had retention in the upper basin they would only need to improve the current airport levee.

Mr. Vander Stoep stated the question before the Airport Board would be, should they promptly take the necessary steps to file a permit with the city and vest their right to complete the levee at a later time? He noted under Washington State law, if the land owners had a permit, the rules for building would apply at the time the permit was submitted. He felt it made sense to spend a little now to at least preserve the option in the event the FEMA maps get changed.

Attorney Don Marcy stated he concurred with the concept of moving forward to try to vest the right to raise the airport levee above the anticipated 100 year flood level. He indicated if they could get the application prepared and submitted prior to the time the new regulations become effective, they would certainly have a good argument that they would be vested to the current rules and regulations. He noted, at such time, the airport could go ahead and raise the levee to provide protection for a fair amount of property, thereby protecting a fair amount of economic development opportunities for the community. Mr. Marcy stated they were looking at every possible option to try and keep the property out of the floodway. He felt it was a viable option that should be considered.

City Attorney Hillier stated the airport property had always been part of the floodplain, which allowed it to be developed under certain regulations; however, if it became part of the floodway it would prevent any commercial development without significant expense beyond what most developers would want to spend. He noted it would also have an impact on the aeronautical side because it would thwart the reconstruction of existing buildings unless they met certain required criteria, which was the risk the airport was currently facing.

Councilor Dawes stated he was glad City Attorney Hillier brought that issue up because unless they had significantly changed the airport's development plan, any aviation related use and development would seriously be impacted if the property were to be included in the floodway.

City Manager MacReynold felt they could have the information the Airport Board would need for submitting a permit application in a fairly short period of time. He noted Bob Montgomery indicated he could do the modeling and hydrology in about four weeks, which was around the same time RB Engineering had identified.

Airport Board Members noted concern about modifying the current levee, noting it might bring a change of ownership that would end up being a tremendous cost. Board members also wanted to know more about the elements of risk involved with the process. Mr. Marcy reported if FEMA were to try and take a hard-line stance and oppose the

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community's effort to raise the levee there would be a couple of legal arguments they could make in order to try to defeat the vested rights claimed. He noted the legal argument would revolve around the fact that they would try to characterize it as a life/safety issue, or they may try to raise some sort of federal pre-emption type argument.

Mr. Marcy thought FEMA should be supportive because by increasing the levee it would protect a lot of property from future floodwater claims directed by the National Flood Insurance Program. He noted the vesting point would be at the time the application was filed, adding they would need to file the application prior to the FEMA maps being finalized in order to be vested to the current maps and their provisions.

Bob Schroeter inquired about the release of the FEMA maps, adding he thought they anticipated on releasing them sometime in the coming month.

Mr. Marcy talked briefly about the preliminary maps, noting regulations provide that local governments do not have to adopt revisions to their flood regulatory program until six months after they receive a letter of final determination, which would not be issued until the maps were finalized. When asked if the preliminary maps would be issued on or before September 22, Mr. Marcy indicated FEMA said they would be issued on the 24th, but it could be pushed back to October 15.

In response to a question from the Airport Board regarding making the levee higher, Mr. Vander Stoep stated, in order for FEMA to certify one of their levees it had to be three feet higher than what they consider to be the 100 year flood. Bob Nacht reported the topographic information he had on file indicated the current levee would be about five feet higher for the most part, noting some of the north-end of the dike had already been added to by the Corps from their repair project. He noted the primary issue with the certification of a levee would be the attempt to remove the airport property from the regulatory floodway, adding it wouldn't necessarily protect it from the 100 year flood level.

The issue of costs was briefly discussed; however, there were no cost estimates at this time.

Airport Manager Allyn Roe inquired as to what would be required in addition to RB Engineering's proposal. Mr. Nacht reported in order to file for a permit under the city's current regulations there would have to be an application for an earthmoving permit, and once the permit was submitted for the filling activity it would then trigger the State Environmental Policy Act (SEPA). He noted in order to get through the SEPA process they would need a hydraulic analysis of what would happen to the floodplain; and a civil plan on what the structural integrity of the levee would be.

Mr. Schroeter asked if the project would count as an in-kind match for the purpose of whatever comes about by the Corps. Mr. Vander Stoep stated he didn't believe they knew that yet, but would not assume it would. He noted there were still a lot of questions that needed to be answered, but felt it only made sense to preserve their right to do the project by filing a permit.

It was asked how long the permit would be good for. Mr. Nacht reported the current regulations provided that a permit issued by the city would be good for either 90 or 180 days. He noted the permit would not expire as long as they continued to do work on the project every 90 or 180 days, depending on the permit type.

Ken Sabin asked if the project would keep FEMA from making any decisions until they complete the work. Mr. Hillier noted the permit would only preserve the right for FEMA to come back and revise their map, to take the airport out of the floodway.

Councilor Harris stated if a permit was not requested they would almost certainly be at the mercy of the FEMA flood maps once they are issued. He felt it was better to have a foot in the door, rather than risk losing all the potential financial generation they had over there.

Mr. Montgomery reported he and Mr. Marcy had met with FEMA and their contactors earlier, noting they talked about a lot of different issues. He characterized FEMA's stance as, they were in the middle of their process and they were going to issue the maps. Mr. Montgomery felt FEMA didn't want to stop the process at this time, and

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indicted after the maps were issued they could talk about parts of the mapping model that were not correct and appealable. He noted FEMA recommended the communities get together and file a letter of revision to modify the floodways, which meant we would have to work with Centralia and Lewis County to work out where the floodways would be.

Mr. Marcy felt the meeting with FEMA was very cordial, adding they were definitely interested in trying to provide the additional information that Mr. Montgomery needed to further analyze what was going on there. He stated it became apparent to him that they were very focused on getting the preliminary maps issued, and they definitely believed the city or communities thought the floodway was wrong, and recommended we collectively ask for a letter of map revision after the maps are released. Mr. Marcy noted they were very skeptical of our ability to file an appeal that would challenge their floodway determination. He reported they clearly made some choices in figuring out what the map would look like in the area around Chehalis and the airport. Mr. Marcy stated there were clearly alternative ways of doing things, adding they ran a model taking out all the storage they had built into the model around the airport, and it didn't seem to have any negative impact based on what he saw. He felt it was a positive meeting and FEMA was interested in working with us, but they had a schedule they were moving toward and the only way they could derail them from that was to play on things they should really re-do at this point, or get some assistance from the federal delegation.

Mr. Montgomery noted FEMA did say a couple of times during their meeting that there hadn't been a successful appeal of a floodway determination. He felt they needed to sit down and look at the floodways more carefully and perhaps see where they could be modified, not just in Chehalis, but downstream as well.

Commissioner Ron Averill thought it was a good idea to move ahead and pursue options.

Mr. Sabin asked if they would go to FEMA to ask them to take the airport out of the floodway before they do the project. It was noted they would first need to submit an application for permit; however, Mr. Hillier indicated, as of August 24, Mt. Vernon received a letter of map revision based upon a permit, vesting some levees around their city.

Councilor Pope stated, as a councilman, he had concerns about the future of our city and how we were going to generate revenue to support the things that needed to be done in the city. He noted it was already proven that the development done had been very rewarding to the city, with reference to revenue. He asked what the Airport Board needed from the council.

City Manager MacReynold reported based on Council's direction it was very clear it needed to be a viable option to consider.

Mayor Ketchum stated the council felt very strongly that the Airport Board needed to start the permit process in order to have their rights afforded to them, in case they need to develop anything further.

Mr. Schroeter asked if the council would be willing to do a resolution to that affect at their next regular city council meeting. He noted the Airport Board's next meeting was scheduled for September 15.

Councilor Lund didn't think they could wait that long

City Attorney Hillier felt timing was important, but obviously there was the financial aspect to it. He noted Mr. Nacht estimated it was going to cost about \$35,000 to get the permitting process started without the hydrology aspect of it. City Attorney Hillier indicated the city didn't have the money, and asked if the Airport Board was in the position to be able to put the money out to pay for the cost of getting the permit in place.

Mr. Schroeter suggested the city make a formal recommendation to the Airport Board at their next meeting on September 15.

City Manager MacReynold suggested a letter from the city council giving clear direction on the issue.

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Councilor Dawes felt they were very clear on what they would like to see done, adding it was important not only to the city, but to the airport. He talked briefly about preserving their rights, so they could at least explore it down the road.

Mr. Vander Stoep suggested the big issue wasn't about allowing new development, but rather, preserving what was already there. He stated if anything happened to any of the buildings that end up in the floodway that would cause them to spend 51 percent of the value of that property to repair it they would not be able to do it. Mr. Nacht stated he would rather see a permit come in as an attempt to protect the airport operation, as opposed to creating an opportunity for new development.

City Manager MacReynold pointed out the key was to get vested as quickly as they could, which was a decision the Airport Board would have to make. He stated he would prepare a letter outlining the direction of the council that each of them would sign.

There being no further business to come before the council, the special meeting adjourned at 6:02 p.m.

Mayor

Attest:

City Clerk

SUGGESTED MOTION

I move that the council approve the minutes of the special city council meeting of August 30, 2010.