



**CITY OF ROCKAWAY BEACH
PLANNING COMMISSION ACTION**

STAFF REPORT

Case File #Land Use Appeal-24-1
Hearing Date: October 9, 2024

APPLICANT: Nedonna Development LLC
AGENT FOR APPLICANT: Dean N. Alterman

APPELLANT: Oregon Shores Conservation Coalition
AGENT FOR APPELLANT: Eric Wriston, Crag Law Center

REQUEST: On August 14, 2024, the City of Rockaway Beach received an appeal of the Planning Commission's decision on Planned Unit Development Application 24-1 – Nedonna Wave Phase 2, filed by Appellant, Oregon Shores Conservation Coalition. The appeal is based on the following issues:

1. The original 2008 approval of the plan for this development has expired.
 2. ORS 92.040 requires the Applicant to resubmit its initial application for this development.
 3. RBZO 3.080 prohibits residential development in a Special Area Wetlands Zones.
 4. RBZO 3.142 requires the Applicant develop evacuation measures and improvements.
 5. RBZO 4.150 requires the City to enforce its riparian setback for McMillan Creek, preapproval.
- A. REPORT OF FACTS:** On August 11, 2024, per RBZO 11.070, the City Council determined at a non-public hearing, the scope of review for the appeal. The City Council determined the scope of review would be limited to the presentation of additional evidence regarding the issues and criteria raised in the appeal.

B. EVALUATION OF THE REQUEST

The appeal is based on the following issues:

ISSUE NO. 1: The original 2008 approval of the plan for this development has expired.

The following substantive criteria apply to this issue. To facilitate review, staff comments are in *italicized font*.

Section 10.050. Procedure - Preliminary Development Plan.

1. The applicant shall submit four copies of the preliminary development plan to the Planning Commission prior to formal application for rezoning. Applications shall be accompanied by a fee prescribed in Section 11.050 of this ordinance. This plan and any written statements shall contain at least the following information:
 - i. A schedule, if it is proposed that the final development plan will be executed in stages.



The Appellant notes that in the original 2008 approval, the Applicant did not provide a schedule as required when seeking to develop a PUD in phases. Regardless, the City did approve the application in 2008, in two phases.

2. The Planning Commission shall consider the preliminary development plan at a public meeting, at which time they shall determine whether the proposal conforms to City ordinances. In addition, in considering the plan, the Planning Commission shall seek to determine that:
 - i. The plan can be completed within a reasonable period of time.

The City's development code should provide clear and objective standards. Without a timeframe specifically set by the RBZO or by the Planning Commission in their 2008 approval, no clear and objective timeframe was set for when the 2008 approval was required to be completed.

ISSUE NO. 2: ORS 92.040 requires the Applicant to resubmit its initial application for this development.

The following substantive criteria apply to this issue. To facilitate review, staff comments are in *italicized font*.

ORS 92.040. Application for approval of subdivision or partition.

1. Before a plat of any subdivision or partition subject to review under ORS 92.044 (Adoption of standards and procedures governing approval of plats and plans) may be made and recorded, the person proposing the subdivision or partition or authorized agent or representative of the person shall make an application in writing to the county or city having jurisdiction under ORS 92.042 (Governing body having jurisdiction to approve plans, maps or plats) for approval of the proposed subdivision or partition in accordance with procedures established by the applicable ordinance or regulation adopted under ORS 92.044 (Adoption of standards and procedures governing approval of plats and plans). Each such application shall be accompanied by a tentative plan showing the general design of the proposed subdivision or partition. No plat for any proposed subdivision or partition may be considered for approval by a city or county until the tentative plan for the proposed subdivision or partition has been approved by the city or county. Approval of the tentative plan shall not constitute final acceptance of the plat of the proposed subdivision or partition for recording. However, approval by a city or county of such tentative plan shall be binding upon the city or county for the purposes of the preparation of the subdivision or partition plat, and the city or county may require only such changes in the subdivision or partition plat as are necessary for compliance with the terms of its approval of the tentative plan for the proposed subdivision or partition.
2. After September 9, 1995, when a local government makes a decision on a land use application for a subdivision inside an urban growth boundary, only those local government laws implemented under an acknowledged comprehensive plan that are in effect at the time of application shall govern subsequent construction on the property unless the applicant elects otherwise.



3. A local government may establish a time period during which decisions on land use applications under subsection (2) of this section apply. However, in no event shall the time period exceed 10 years, whether or not a time period is established by the local government. [Amended by 1955 c.756 §7; 1973 c.696 §7; 1983 c.826 §8; 1989 c.772 §5; 1995 c.812 §9; 2005 c.22 §71]

While City Staff initially agreed with the Appellant's interpretation of this ORS, after speaking with the Applicant and the City's legal counsel, Staff reversed its opinion, based on the arguments presented by the Applicant and the applicable case law.

The Applicant argued that ORS 92.040(3) does not make land use decisions expire; rather, it states that a City can allow an Applicant whose application was approved to choose between the old rules and the new rules for up to 10 years after the application is approved.

This interpretation was supported by the ruling in Claus v. City of Sherwood (LUBA No. 2022-080, filed on March 9, 2023) and in Athletic Club of Bend, Inc. v. City of Bend, 239 Or App 89 (2010).

ISSUE NO. 3: RBZO 3.080 prohibits residential development in a Special Area Wetlands Zones.

The following substantive criteria apply to this issue. To facilitate review, staff comments are in *italicized font*.

Rockaway Beach Zoning Ordinance Section 3.080, Special Wetlands Area (SA). In the SA zone the following regulations shall apply:

4. Standards. In the SA zone, the following standards shall apply:
 - a. All activities involving construction or alteration in wetlands or aquatic areas shall be reviewed by the Oregon Division of State Lands and the US Army Corps of Engineers to determine permit applicability.

The Application has been provided to DSL for review. The DSL response is included with the record, outlining additional reporting and permitting necessary for this Application.

The Planning Commission conditioned its approval, requiring the Applicant to submit evidence that all necessary permits and approvals from the U.S. Army Corps of Engineers and Oregon Department of States Lands have been obtained for impacts to wetlands, in accordance with the approved plan.

5. Zone Boundary Determination. At such time that a development is proposed in the vicinity of an area designated Special Area Wetlands, the City may require a site investigation to determine the exact location of the zone boundary. The site investigation shall be performed by a qualified agent such as a biologist from the U.S. Army Corps of Engineers or the Division of State Lands.



The Application has been provided to DSL for review. The DSL response is included in the record, outlining the requirement for an updated site investigation to be conducted by a qualified agent to determine the exact location of the zone boundary.

The Planning Commission conditioned its approval, requiring the Applicant to complete a wetland delineation to be reviewed and approved by the Department of State Lands to determine if there is a change in the wetland boundaries and if a wetland removal-fill permit is required. This delineation shall be sufficiently sized to include both Phases 2 and 3. The approval from the Department of States Lands must be current (no more than 2 years old).

ISSUE NO. 4: RBZO 3.142 requires the Applicant develop evacuation measures and improvements.

The following substantive criteria apply to this issue. To facilitate review, staff comments are in *italicized font*.

Rockaway Beach Zoning Ordinance Section 3.140 (6), Tsunami Hazard Overlay Zone (TH). In the TH zone the following regulations shall apply:

6. Evacuation Route Improvement Requirements. Except single family dwellings on existing lots and parcels, all new development, substantial improvements and land divisions in the Tsunami Hazard Overlay Zone shall incorporate evacuation measures and improvements, including necessary vegetation management, which are consistent with and conform to the adopted Tsunami Evacuation Facilities Improvement Plan. Such measures may include:
 - a. On-site improvements: (i) Improvements necessary to ensure adequate pedestrian access from the development site to evacuation routes designated in the Evacuation Route Plan in all weather and lighting conditions. (ii) Frontage improvements to designated evacuation routes that are located on or contiguous to the proposed development site, where such improvements are identified in the Tsunami Evacuation Facilities Improvement Plan. Such improvements shall be proportional to the evacuation needs created by the proposed development.

The Application does not address on-site evacuation route improvements.

The Planning Commission conditioned its approval, requiring the Applicant to submit evidence that tsunami evacuation routes are sufficient to meet the proportional evacuation needs created by the proposed development

- b. Off-site improvements: Improvements to portions of designated evacuation routes that are needed to serve, but are not contiguous to, the proposed development site, where such improvements are identified in the Tsunami Evacuation Facilities Improvement Plan. Such improvements shall be proportional to the evacuation needs created by the proposed development.



The Application does not address off-site evacuation route improvements.

- c. Evacuation route signage consistent with the standards set forth in the Tsunami Evacuation Facilities Improvement Plan. Such signage shall be adequate to provide necessary evacuation information consistent with the proposed use of the site.

The Application does not address tsunami evacuation route signage.

- d. Evacuation route improvements and measures required by this subsection may include the following: (i) Improved streets and/or all-weather surface paths of sufficient width and grade to ensure pedestrian access to designated evacuation routes in all lighting conditions; (ii) Improved streets and paths shall provide and maintain horizontal clearances sufficient to prevent the obstruction of such paths from downed trees and structure failures likely to occur during a Cascadia earthquake; and (iii) Such other improvements and measures identified in the Evacuation Route Plan.

The Application does not provide for evacuation route improvements.

ISSUE NO. 5: RBZO 4.150 requires the City to enforce its riparian setback for McMillan Creek, preapproval.

The following substantive criteria apply to this issue. To facilitate review, staff comments are in *italicized font*.

Section 4.150. Riparian Vegetation. Riparian vegetation adjacent to the lakes and streams in Rockaway Beach shall be protected in accordance with the following provisions:

1. The following areas of riparian vegetation are defined:
 - a. Fifteen feet on either side of McMillan, Steinhilber, Finney, Rock, Heitmiller, Saltair, and Spring Creeks and any other known stream bed.

No development is proposed within 15 feet of McMillan Creek, as reflected in the maps provided by the Applicant.

The Planning Commission conditioned its approval as follows: The development shall avoid entering City designated riparian setback of 15' for McMillan Creek. If site constrains will not allow for this, the Applicant coordinate with Oregon Department of Fish and Wildlife to develop a plan to mitigate for these impacts and shall provide evidence of approval. Any development within these areas which could result in a loss of fish and wildlife habitat would require that the impact be mitigated consist with current habitat mitigation standards.

This condition is consistent with RBZO 4.150 (5), which states: The City may approve the removal of riparian vegetation when vegetation removal and a plan to re-vegetate the



riparian area has been reviewed and approved by the Oregon department of Fish and Wildlife.

CONCLUSION

The City Council should carefully consider the request, including all oral and written testimony on record and presented at the public hearing, as they pertain to the criteria on which the appeal was filed. After considering testimony as it relates to these applicable criteria, the City Council will need to make a decision on the request.

The City Council may affirm, reverse, or modify in whole or in part, the Planning Commission's decision on the Nedonna Wave Planned Unit Development application, #PUD-24-1.

If the City Council affirms the decision of the Planning Commission, the City Council shall provide a statement that generally reflects the facts and rationale relied upon to reach the decision. The motion should also direct staff to prepare findings, conclusions, and a final order to implement the decision.

If the City Council modifies or renders a decision that reverses the decision of the Planning Commission, the City Council shall provide a statement that generally reflects the facts and rationale relied upon to reach the decision. The motion should also direct staff to prepare findings, conclusions, and a final order to implement the decision.

If the City Council elects to remand the matter back to the Planning Commission for further consideration as it deems necessary, it shall include a statement explaining the error found to have materially affected the outcome of the original decision and the action necessary to rectify such.

Notice of the City Council decision shall be provided to all parties to the hearing within five working days of the date that the final order is signed. The decision may be appealed to the Land Use Board of Appeals by filing a notice of intent to appeal within 21 days.

**EX-PARTE
MATERIALS
FOR HEARING**

**Land Use Appeal # 24-1
Nedonna Wave Planned Unit
Development - Phase 2**



City of Rockaway Beach

Regular City Council Meeting Minutes

Date: Wednesday, July 17, 2024
Location: Rockaway Beach City Hall, 276 Hwy 101 - Civic Facility

1. CALL TO ORDER

Mayor McNeilly called the meeting to order at 6:00 p.m.

McNeilly made a statement regarding deportment, requesting that all people respect those in attendance and the opinions of those with whom they may disagree prior, during and after City business meetings.

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

Start time: 6:01 p.m.

Council Members Present: Mayor Charles McNeilly; Councilors Penny Cheek, Mary McGinnis, Tom Martine, Kristine Hayes, and Alesia Franken

Staff Present: Luke Shepard, City Manager; Melissa Thompson, City Recorder; Marni Johnston, Finance Director; Dan Emerson, Public Works Superintendent; Todd Hesse, Fire Chief; Matt Kelly, Undersheriff, and Kevin Grogan, Sheriff's Deputy.

4. CONSENT AGENDA

Start time: 6:01:30 p.m.

- a. Approval of June 12, 2024 Regular Meeting Minutes
- b. Approval of June 12, 2024 Workshop Minutes
- c. Approval of June 11, 2024 Strategic Planning Retreat Minutes
- d. Review of June 2024 Check Register

Martine made a **motion**, seconded by Cheek, to approve the Consent Agenda.

The **motion carried** by the following vote:

Aye: 5 (Cheek, McGinnis, Martine, Hayes, Franken)

Nay: 0

5. PRESENTATIONS, GUESTS & ANNOUNCEMENTS

a. Community Grant Recipient Report – Theresa Bruneau, Meals for Seniors, Inc.

Start time: 6:02:55 p.m.

Bruneau gave a report summarizing how the Meals for Seniors grant funding was spent, and the meals provided to the community. Councilors commended the program.

b. Community Grant Recipient Report – Sandra Johnson & Robin Swain, Rockaway Beach Volunteers

Start time: 6:05:30 p.m.

Swain and Johnson reported on the tools and volunteer t-shirts and sweatshirts purchased with grant funding and the community projects and events supported by the volunteers. The Council Members expressed thanks for the volunteers.

c. Community Grant Recipient Report - Pam Hiller, Tillamook County Developmental Disabilities Advisory Council & David Richmond, Tillamook County Developmental Disabilities Program Manager

Start time: 6:10:16

Hiller reported that grants funds were used for food and park rental for the Annual Picnic for Intellectual and Developmental Disabilities. Richmond commended Hiller and provided an overview of the Tillamook County Developmental Disabilities Program, and the people it serves. They both expressed the value of the Annual Picnic to the community. Councilors commented on the success of the event and acknowledged City staff.

6. STAFF REPORTS

a. Fire Department

Start time: 6:18:35 p.m.

Hesse presented the staff report on the activities and operations of the Rockaway Beach Fire Rescue department for the month of June. He added that there was an upcoming Train the Trainer CERT class, and briefly reported on the 4th of July. Hesse confirmed that a burn ban was now in effect. McNeilly expressed appreciation for the department's medical response capabilities.

b. Sheriff's Office

Start time: 6:33:30 p.m.

Grogan summarized the Sheriff's Office report for June. He added that traffic signs installed near the Old Growth Cedar seemed to be working. There were brief comments regarding 4th of July.

c. Public Works

Start time: 6:28:46 p.m.

Emerson presented his report on activities in the Public Works department in June. Council Members expressed appreciation for assistance with a Strategic Plan information booth. McNeilly commented on Public Works' installation of a "no parking" sign on Beacon Street, noting it was one of the mitigation efforts to address public concerns in the neighborhood around Anchor Street Park.

d. City Manager

Start time: 06:37:30 p.m.

Shepard gave a presentation providing background information on the business items on the agenda, updates on other City projects and activities, and upcoming public meetings.

7. PUBLIC HEARING**a. Public Hearing on Ordinance 2024-03 Amending the Rockaway Beach Code of Ordinances, Chapter 91, Section 91.01 Feeding and Keeping of Wild Animals**

Start time: 6:47:26 p.m.

McNeilly stated this Public Hearing allows public comment regarding proposed changes to the City code regarding the feeding and keeping of wild animals.

McNeilly opened the public hearing at 6:47 p.m.

Kathleen Lenge submitted a flyer from the Oregon Department of Fish and Wildlife titled "Don't Feed Deer and Elk." Lenge commented in support of the Ordinance, expressing concerns about the feeding of deer.

Barbara Riley shared concerns that deer cannot digest the food that those are feeding them, and expressed support for the Ordinance.

McNeilly closed the public hearing at 6:53 p.m.

8. CITIZEN INPUT ON NON-AGENDA ITEMS

Start time: 6:53:07 p.m.

Bill Hassell commented on recent projects providing accessibility in Rockaway Beach. Hassell advocated for Mobi-Mats to provide better wheelchair access to the beach at the Wayside. He read a letter of support from Dan Haag, Tillamook Coast Visitors Association Director of Trails, Outdoor Recreation, and Accessibility.

Delta Holderness read aloud a letter she submitted expressing concerns about the Nedonna Wave Planned Unit Development (PUD 24-1).

Goldea See stated that the Anchor Street Park is too loud at night. See advocated for installing a vegetation sound wall and reducing volume on the sound machines. She expressed appreciation for the parking sign that was installed.

Gary Corbin expressed concerns regarding the Nedonna Wave development proposal, advocating for a new application process.

Lyndsey Matteson expressed concerns about fireworks debris, including plastics, which was left after the professional fireworks show. Matteson suggested that if the debris was impossible to remove, then the Council should consider a drone show.

9. OLD BUSINESS

a. Approval of Amended May 8, 2024 Workshop Minutes

Start time: 07:12:00

McNeilly explained that at the June 12, 2024 City Council Meeting, Hayes asked that the minutes regarding her comments be amended, and City Recorder Thompson was directed to review the recording. McNeilly stated that amended minutes were in the agenda packet for consideration. McNeilly commented on the state statute requirements for meeting minutes and Robert's Rules of Order regarding minutes. McNeilly suggested that the Council Rules be amended to provide clear guidelines for meeting minutes.

Hayes made a **motion**, seconded by Franken, to approve the amended May 8th Workshop Minutes.

Hayes commented that the minutes looked clear to her.

McGinnis commented that she concurred with the definitions of minutes shared by McNeilly and that the amended minutes provided too much information. McGinnis supported the suggestion to amend the Council Rules to provide clarity.

Shepard commented that it would be helpful to the City Recorder for the Council to clarify expectations.

The **motion carried** by the following vote:

Aye: 4 (Franken, Hayes, Martine, McGinnis)

Nay: 1 (Cheek)

10. NEW BUSINESS

- a. **First & Second Reading by Title Only of Ordinance 2024-03 An Ordinance Amending City of Rockaway Beach Code of Ordinances Chapter 91, Section 91.01 Feeding and Keeping of Wild Animals**

Start time: 7:15:20 p.m.

McNeilly explained Ordinance 2024-03 expands the City of Rockaway Beach Code of Ordinances regarding the feeding and keeping of wild animals, making it consistent with state law, and adds a provision regarding penalties. McNeilly stated this was consideration to perform the first and second reading of Ordinance 2024-03.

Hayes made a **motion**, seconded by McGinnis, to perform the first and second reading by title only of Ordinance 2024-03.

The **motion carried** by the following vote:

Aye: 5 (Cheek, Franken, Hayes, Martine, McGinnis)

Nay: 0

McNeilly performed the first and second reading by title only of Ordinance 2024-03 An Ordinance Amending City of Rockaway Beach Code of Ordinances Chapter 91, Section 91.01 Feeding and Keeping of Wild Animals.

Martine made a **motion**, seconded by Franken, to approve the first and second reading by title only of Ordinance 2024-03.

The **motion carried** by the following vote:

Aye: 5 (Cheek, Franken, Hayes, Martine, McGinnis)

Nay: 0

- b. **Consideration to Adopt Ordinance 2024-03 Ordinance Amending City of Rockaway Beach Code of Ordinances Chapter 91, Section 91.01 Feeding and Keeping of Wild Animals**

Start time: 7:18:45 p.m.

McNeilly explained that with the first and second reading now complete, Ordinance 2024-03 is ready for adoption.

McGinnis made a **motion**, seconded by Franken, Adopt Ordinance 2024-03, an Ordinance Amending City of Rockaway Beach Code of Ordinances Chapter 91, Section 91.01 Feeding and Keeping of Wild Animals

McGinnis commented that public comments expressed concern about the health of the animals, and safety concerns. McGinnis noted the ordinance reflected state law.

The **motion carried** by the following vote:

Aye: 5 (Cheek, Franken, Hayes, Martine, McGinnis)

Nay: 0

c. Consideration to Make Appointments to the Planning Commission to Fill Vacant Positions 4 & 6

Start time: 7:20:22 p.m.

McNeilly explained that applications received for the open positions were included in the Council packet for review. He stated the two applicants for the vacant Planning Commission Positions were the previous position holders, Sandra Johnson (Position 4) and Nancy Lanyon (Position 6). The City Charter grants the Mayor authority to nominate for vacancies, with appointment by a majority of the Council.

McNeilly nominated Sandra Johnson to fill Position 4, and Nancy Lanyon to fill Position 6.

No audience members wished to comment.

Cheek made a **motion**, seconded by Franken, that the Rockaway Beach City Council appoint Sandra Johnson to position #4 and appoint Nancy Lanyon to position #6 for the Rockaway Beach Planning Commission.

McGinnis commented that these were two people who were currently serving on the Planning Commission and expressed appreciation that they were doing a solid job.

The **motion carried** by the following vote:

Aye: 5 (Cheek, Franken, Hayes, Martine, McGinnis)

Nay: 0

11. ITEMS REMOVED FROM CONSENT AGENDA – None removed

12. COUNCIL CONCERNS

Start time: 7:22:27 p.m.

Cheek thanked Hesse for the Fire Departments hard work on the 4th of July. Cheek thanked Shepard for his leadership and meeting packet information. She congratulated Shepard on doing a great job.

Franken commented that she was Council Liaison for the Sourcewater Protection Plan Development Advisory Committee (SPPDAC) and expressed that she was impressed by the level of participation and engagement by the citizens that are helping protect the watershed. Franken encouraged attendance at the next SPPDAC meeting on July 29th. Franken commented on the July 4th events and thanked the Rockaway Beach Volunteers, City staff, Fire Department, Sheriff's Office and Public Works. She encouraged the public to take the Strategic Plan survey.

Hayes commented she was glad that seasonal Public Works staff was hired. Hayes expressed disappointment about fireworks debris.

Martine commented he was pleased to hear the Community Grant reports and noted the importance of providing receipts.

McGinnis echoed Franken's comments regarding the 4th of July events, thanking City staff and volunteers. McGinnis stated that the City was still working on a grant for the Salmonberry Trail, and announced upcoming walks sponsored by the Salmonberry Trail foundation. She commented that milfoil on Lake Lytle was being addressed, noting that the state owns the lake. McGinnis shared comments on the Annual Picnic, and comments she had heard from short-term rental owners. McGinnis encouraged the public to participate in the Strategic Plan survey.

13. MAYOR'S REPORT

Start time: 7:33:37 p.m.

McNeilly shared a presentation slide with information on the Tillamook County Community Update hosted by the Tillamook County Commissioners every Tuesday, and invited the public to attend to hear updates from key organizations and cities throughout the county. McNeilly directed attention to visitrockawaybeach.org, the City's official tourism website. McNeilly thanked the Tillamook County Visitors Association for their work and shared his efforts to distribute QR code stickers promoting the website. McNeilly presented slides providing fact checks on social media posts. He invited the public to contact him by email with questions.

14. ADJOURNMENT

Start time: 7:45:28 p.m.

Franken **moved**, seconded by Martine, to adjourn the meeting at 7:45 p.m.

The **motion carried** by the following vote:

Aye: 5 (Cheek, Franken, Hayes, Martine, McGinnis)

Nay: 0

MINUTES APPROVED THE
14TH DAY OF AUGUST 2024



Charles McNeilly, Mayor

ATTEST



Melissa Thompson, City Recorder



City of Rockaway Beach

Regular City Council Meeting Minutes

Date: Wednesday, August 14, 2024
Location: Rockaway Beach City Hall, 276 Hwy 101 - Civic Facility

1. CALL TO ORDER

Mayor McNeilly called the meeting to order at 6:00 p.m.

McNeilly made a statement regarding deportment, requesting that all people respect those in attendance and the opinions of those with whom they may disagree prior, during and after City business meetings.

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

Start time: [06:02:09 PM \(00:01:37\)](#)

Council Members Present: Mayor Charles McNeilly; Councilors Penny Cheek, Mary McGinnis, Tom Martine, Kristine Hayes, and Alesia Franken

Staff Present: Luke Shepard, City Manager; Melissa Thompson, City Recorder; Elizabeth Avila, Administrative Assistant II; Dan Emerson, Public Works Superintendent; and Todd Hesse, Fire Chief.

4. CONSENT AGENDA

Start time: [06:02:32 PM \(00:01:59\)](#)

- a. Approval of July 17, 2024 Regular Meeting Minutes
- b. Approval of July 17, 2024 Workshop Minutes
- c. Review of July 2024 Check Register

Franken made a **motion**, seconded by Martine, to approve the Consent Agenda.

The **motion carried** by the following vote:

Aye: 5 (Cheek, McGinnis, Martine, Hayes, Franken)
 Nay: 0

5. PRESENTATIONS, GUESTS & ANNOUNCEMENTS

- a. **State of the City** – Mayor Charles McNeilly
 Start time: [06:03:55 PM \(00:03:22\)](#)

McNeilly delivered a State of the City address. (A copy of the address is included in the record for the meeting.) McGinnis expressed appreciation for the community members of Rockaway Beach.

b. Jetty Creek Project Update – Daniel Wear, Sustainable Northwest

Start time: [06:38:44 PM \(00:38:12\)](#)

Wear gave a presentation providing updates on funding, stakeholder groups, and next steps in the Jetty Creek Watershed acquisition project. Wear and Shepard answered clarifying questions from the Council.

c. David’s Chair - Jeff Kallevig, Operations Manager, NW Oregon, David’s Chair Outdoor Mobility Systems

Start time: [06:18:58 PM \(00:18:26\)](#)

Kallevig shared a video and provided an overview of the David’s Chair Outdoor Mobility System program. Kallevig answered clarifying questions for the Council.

d. Community Grant Recipient Report – Friends of the Library, Jean Scholtz

Start time: [07:00:39 PM \(01:00:06\)](#)

Scholtz reported on how funds were expended for three Community Grants received from the City. Martine expressed appreciation for the detailed report.

e. Community Grant Recipient Report – Rockaway Writer’s Rendezvous, Don Backman

Start time: [07:11:44 PM \(01:11:12\)](#)

Don Backman, John Bailey, and Robin Swain shared how Community Grant funds were used for the Rockaway Writer’s Rendezvous event. They provided Councilors with a copy of the anthology that was published using grant funds. Swain confirmed that anthologies are available for purchase at various locations in town and online. McGinnis disclosed that she is on the board of the Rockaway Writer’s Rendezvous and shared how local businesses benefitted from the event. McNeilly shared he was judge and was impressed.

f. Community Grant Recipient Report – North Coast Communities for Watershed Protection (Fulcrum Community Resources) – Nancy Webster

Start time: [07:22:35 PM \(01:22:02\)](#)

Nancy Webster reported on how Community Grant funds were spent and future expenditures for the North Coast Communities for Watershed Protection speaker series. Webster shared an event flyer and a preliminary grant report with the Council. Comments provided by McNeilly, McGinnis and Cheek.

Hayes left the meeting room at 7:25 p.m. and returned at 7:26 p.m.

6. STAFF REPORTS

a. Fire Department

Start time: [07:32:19 PM \(01:31:46\)](#)

Hesse presented the staff report on the activities and operations of the Rockaway Beach Fire Rescue department for the month of July. He added that there were several open positions for volunteer firefighters. Hesse noted the presence of ocean riptides. Hesse commented on fires across the state, sharing that there were 14 conflagrations declared to date this year. Hesse answered questions from the Council.

b. Sheriff's Office – not present

c. Public Works

Start time: [07:45:24 PM \(01:44:51\)](#)

Emerson presented his report on activities in the Public Works department in July. Emerson added a brief overview of the Wayside Beach Access project improvements. Council members expressed appreciation for Public Works.

d. City Manager

Start time: [07:48:55 PM \(01:48:23\)](#)

Shepard gave a presentation providing background information on the business items on the agenda, upcoming public meetings, and highlights of recent grant funding secured by staff.

7. PUBLIC HEARING – None Scheduled

McNeilly called for a recess at 7:55 p.m. McNeilly called the meeting back to order at 8:00 p.m.

8. CITIZEN INPUT ON NON-AGENDA ITEMS

Start time: [08:01:06 PM \(01:54:56\)](#)

Goldea See shared thanks that there were plans to address noise concerns at Anchor Street Park, and expressed additional concerns about light. See suggested color-coded music cards could be provided for the musical playground equipment.

Bob Larson read a statement on behalf of Diane Johnson advocating for an ordinance to preserve wetlands.

Nancy Lanyon expressed concerns regarding a letter addressed to Mayor McNeilly from the Federal Emergency Management Agency's (FEMA) regarding Pre-Implementation Compliance Measures (PICM) for the National Flood Insurance Program (NFIP).

Delta Holderness referred to her submitted written comments and shared that she had a conversation with Chief Hesse regarding her concerns. Holderness expressed additional concerns regarding street safety in Nedonna Beach.

Seth Thompson advocated for the preservation of wetlands in Nedonna Beach.

Suzanne Thomspson, resident of David Avenue, expressed concerns about the Planning Commission approval of the Planned Unit Development application #PUD 24-1. Thompson shared concerns about only one evacuation exit, and risks to wetlands and salmon, trout and beaver habitats. She urged the City Council to deny the application if they had the opportunity to do so.

9. OLD BUSINESS – None Scheduled

10. NEW BUSINESS

a. Consideration of Resolution 2024-38 Approving a Lease Agreement with Neah-Kah-Nie School District No. 56 for Tennis Court Property

Start time: [08:20:55 PM \(02:14:45\)](#)

McNeilly explained this resolution approves a lease agreement with Neah-Kah-Nie School District No. 56 for the Tennis Court property for a period of 5 years, for a payment of \$10. McNeilly stated a previous 1-year lease with the district will expire in September.

No audience members wished to comment.

Martine made a **motion**, seconded by Cheek, to approve Resolution 2024-38 Approving a Lease Agreement with Neah-Kah-Nie School District No. 56 for Tennis Court Property.

McGinnis appreciated the change from a one-year to five-year lease. McNeilly commented that the court was well-used and was a great asset.

The **motion carried** by the following vote:

Aye: 5 (Cheek, Franken, Hayes, Martine, McGinnis)

Nay: 0

b. Consideration of Resolution 2024-39 Authorizing the Mayor and City Manager to Execute a Contract with the Lowest Responsive and Responsible Bidder for the Wayside Beach Access Improvements Project

Start time: [08:23:34 PM \(02:17:24\)](#)

McNeilly explained that this resolution delegates authority to the Mayor and City Manager to ensure a timely contract award and execution of the project.

No audience members wished to comment.

Hayes made a **motion**, seconded by Franken, to approve Resolution 2024-39, A Resolution Authorizing the Mayor and City Manager to Execute a Contract with the Lowest Responsive and Responsible Bidder for the Wayside Beach Access Improvements Project.

Hayes expressed enthusiasm.

The **motion carried** by the following vote:

Aye: 5 (Cheek, Franken, Hayes, Martine, McGinnis)

Nay: 0

c. Consideration of Resolution 2024-40 Approving a Memorandum of Understanding with David's Chair Outdoor Mobility Systems

Start time: [08:25:36 PM \(02:19:26\)](#)

McNeilly explained this resolution approves a Memorandum of Understanding with David's Chair Outdoor Mobility Systems to provide an electric all-terrain track chair to Rockaway Beach for loan and use by residence and visitors who reserve their usage through a website managed by David's Chair.

No audience members wished to comment.

McGinnis made a **motion**, seconded by Martine, to approve Resolution 2024-40 Approving a Memorandum of Understanding with David's Chair Outdoor Mobility Systems.

The **motion carried** by the following vote:

Aye: 5 (Cheek, Franken, Hayes, Martine, McGinnis)

Nay: 0

11. ITEMS REMOVED FROM CONSENT AGENDA

12. COUNCIL CONCERNS

Start time: [08:27:19 PM \(02:21:10\)](#)

Cheek commented she was pleased that City was acquiring David's Chair. Cheek commented

regarding legal action filed against the City by Hayes and two others, noting it costs the city money and taxpayers will foot the bill.

Franken shared she attended training in Garibaldi regarding Executive Sessions. Franken stated that a Sourcewater Protection Plan Development Advisory Committee (SPPDAC) meeting was held on July 29th. She shared she was impressed by citizen attention and involvement. Franken shared citizen concerns that the Council give consideration to infrastructure outside of the Jetty Creek watershed, especially project plans in the Nedonna Beach area. Franken thanked Sandra Johnson for arranging a tour of the Boneyard Ridge restoration project. Franken echoed the Mayor's sentiments from the State of the City address regarding the city's amazing staff.

Hayes thanked all who helped with the Art Festival. She expressed gratitude to Captain Grace for coming to her rescue. Hayes advocated for looking at dark skies' issues. Hayes shared neighbors' concerns regarding people in nature preserve doing illegal things. Hayes suggested entertaining an ordinance restricting access from dusk to dawn in the nature preserve and all parks to empower the Sheriff's Department to address issues. Hayes expressed gratitude for the passing of the resolution regarding Wayside access improvements.

Martine commented on the passing of resident Winnie Mercer. McNeilly expressed condolences to her family on their loss.

McGinnis thanked the Mayor for the State of City address. She reported attending the training on public meetings. McGinnis stated she toured the Astoria watershed, and would attend the Boneyard Ridge tour. McGinnis stated it was a privilege to be a Councilor and with it comes hard work. She thanked Planning Commission President Hassell for calling milfoil at Lake Lytle to the City's attention. McGinnis commented on responsibility for policy making. McGinnis stated that three individuals were involved in a court action in the last week to attempt to take position numbers off the ballot. McGinnis indicated that she stands by her previous comments that a citizens advisory committee should decide. McGinnis responded to written citizen testimony that the City doesn't have employee policies, stating that the City has both an employee policy handbook and a collective bargaining agreement with the union. She noted that City Councilors may not be involved in the hiring, firing, administration or removal of employees. McGinnis spoke in support of City employees, noting that they are the stability of the city.

13. MAYOR'S REPORT

Start time: [08:40:50 PM \(02:34:41\)](#)

McNeilly encouraged all to visit the City Facebook page for updates. McNeilly shared slides providing an update on the QR code for the visitrockawaybeach.org website, and business façade grant recipient's storefront improvements.

McNeilly reiterated comments shared at the June meeting regarding the process of electing City Councilors by position numbers. McNeilly stated that some community members suggested a change back to block voting. McNeilly explained that the City Charter was silent on the issue. He

stated that the best practice indicated that how a councilor is elected should not occur with the current election cycle, but should take effect with the next succeeding election. McNeilly stated for these reasons the City Elections Official and City Council followed the recommendation of the City Attorney to not make changes with the November 2024 election. McNeilly advocated for transparent and open community engagement through a holistic review of the City Charter, which would then go to the City voters for approval. McNeilly shared that an attorney representing Justin McMahan and Daniel Howlett had filed a petition with the Tillamook County Court to remove the position numbers from the ballot without a rigorous community discussion or input from the voters. McNeilly shared a document filed with the court indicating that Kristine Hayes was involved at some point with the petition. McNeilly spoke in defense of City staff, residents, and voters, stating that the city disagrees with the petition's assertions.

14. ADJOURNMENT

Start time: [08:48:01 PM \(02:41:52\)](#)

McGinnis **moved**, seconded by Martine, to adjourn the meeting at 8:48 p.m.

The **motion carried** by the following vote:

Aye: 5 (Cheek, Franken, Hayes, Martine, McGinnis)

Nay: 0

MINUTES APPROVED THE
11TH DAY OF SEPTEMBER 2024



Charles McNeilly, Mayor

ATTEST



Melissa Thompson, City Recorder



City of Rockaway Beach

City Council Workshop Minutes

Date: Wednesday, September 11, 2024
Location: Rockaway Beach City Hall, 276 HWY 101 – 2nd Floor Conference Room

1. CALL TO ORDER

Mayor McNeilly called the meeting to order at 4:30 p.m.

2. ROLL CALL

Council Members Present: Mayor Charles McNeilly; Councilors Penny Cheek, Mary McGinnis, Tom Martine, Kristine Hayes, and Alesia Franken

Staff Present: Luke Shepard, City Manager; Melissa Thompson, City Recorder; and Mary Johnson, City Planner

[Mayor - Charles McNeilly: Present](#)

[Position #3 - Kristine Hayes: Present](#)

[Position #4 - Alesia Franken: Present](#)

[Position #1 - Mary McGinnis: Present](#)

[Position #5 - Penelope Cheek: Present](#)

[Position #2 - Tom Martine: Present](#)

3. COUNCIL BRIEFING/DISCUSSION

a. Discussion Regarding Scope of Review for Land Use Appeal # 24-1, Nedonna Wave Planned Unit Development - Phase 2

Start time: [04:31:44 PM \(00:00:39\)](#)

Shepard explained that the Council will determine the scope of review for Land Use Appeal # 24-1 in the regular session, and that the City's land use attorney, Armand Resto-Spotts, and City Planner Johnson will give presentations. City Planner Johnson shared a presentation providing an overview of the Planning Commission's land use decision and the section of the City Zoning Ordinance regarding scope of review. Johnson answered clarifying questions for the Council. Resto-Spotts prefaced his comments by stating that the City Council cannot discuss the substance or the merits of the appeal. Resto-Spotts explained the scope of review options: hearing the appeal on the record, de novo, admitting new evidence related to specific issues necessary to resolve the matter, or remanding to the Planning Commission. He shared comments on each approach. Resto-Spotts suggested that a remand to the Planning Commission was not appropriate as there were no procedural issues. He explained that the other options were at the Council's discretion.

Johnson provided the Council with a document listing options for possible motions.

McNeilly noted that the option labelled “b” would limit additional evidence to one or more issues that the appellant has raised. McGinnis indicated she was leaning toward that option, and allowing new evidence on all five criteria raised in the appeal. Franken and McNeilly concurred. There were brief comments regarding tsunamis and wetlands. Resto-Spotts cautioned against talking about particulars of the property.

Hayes disclosed past work with the developer involved in the appeal, a call from the developer that she did not return, and past work with the wetlands specialist, noting potential conflict of interest. Hayes clarified that she did not anticipate working with the developer again. Resto-Spotts explained that prior relationships could be a potential conflict of interest or bias and should be put on the record at the hearing. He further explained that ex-parte contact and potential bias must be declared, and she should decide whether to recuse herself based on further consideration and if involved parties raise the issue at the hearing. Resto-Spotts stated that he did not consider it an actual conflict of interest related to the decision.

There was consensus to consider the scope of review to allow additional evidence regarding all five issues raised in the appeal. Johnson indicated she would prepare a motion for the Council based on their discussion. Resto-Spotts suggested wording for the motion.

Cheek disclosed she served on the Planning Commission in 2011. Resto-Spotts stated that did not pose any conflict or bias.

b. Review of Resolution 2024-41 Budget Resolution for Sound Amplification Equipment

Start time: [05:05:21 PM \(00:34:17\)](#)

Shepard explained that some members of the public had expressed difficulty hearing the Council in meetings, and staff was directed to address it. The Council reviewed the quotes and proposed resolution. Shepard answered clarifying questions. Hayes advocated to include a loop system for those with hearing aids.

c. Public Meetings Law Training Update

Start time: [05:10:22 PM \(00:39:18\)](#)

Shepard gave a brief overview of new requirements imposed by House Bill 2805, including annual public meeting law training. Shepard explained the city was on the waitlist for in-house training, possibly in November, with online training available starting in October. Thompson added that corresponding state administrative rules were still in the process of being adopted.

Additional Discussion:

In response to a request from McGinnis, Shepard provided an update on the Lake Lytle project and milfoil management, sharing a slide from the upcoming regular Council meeting presentation.

Cheek shared that she had heard requests from community members to lower speed limits on Highway 101. In response to a question from Hayes, Shepard shared that Alta was planning to provide an update on the Salmonberry Trail in October.

4. ADJOURNMENT

Start time: [05:21:39 PM \(00:50:35\)](#)

Martine made a **motion**, seconded by Franken, to adjourn the meeting at 5:22 p.m.

The **motion carried** by the following vote:

Aye: 5 (Cheek, McGinnis, Martine, Hayes, Franken)

Nay: 0

MINUTES APPROVED THE
9TH DAY OF OCTOBER 2024

Charles McNeilly, Mayor

ATTEST

Melissa Thompson, City Recorder



City of Rockaway Beach

Regular City Council Meeting Minutes

Date: Wednesday, September 11, 2024
Location: Rockaway Beach City Hall, 276 Hwy 101 - Civic Facility

1. CALL TO ORDER

Mayor McNeilly called the meeting to order at 6:00 p.m.

McNeilly made a statement regarding department, requesting that all people respect those in attendance and the opinions of those with whom they may disagree prior, during and after City business meetings.

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

Start time: [06:02:08 PM \(00:02:08\)](#)

Council Members Present: Mayor Charles McNeilly; Councilors Penny Cheek, Mary McGinnis, Tom Martine, Kristine Hayes, and Alesia Franken

Staff Present: Luke Shepard, City Manager; and Melissa Thompson, City Recorder; Dan Emerson, Public Works Superintendent; Todd Hesse, Fire Chief; and Kevin Grogan, Sheriff's Deputy

4. CONSENT AGENDA

Start time: [06:02:25 PM \(00:02:25\)](#)

- a. Approval of August 14, 2024 Regular Meeting Minutes
- b. Approval of August 14, 2024 Workshop Minutes
- c. Review of August 2024 Check Register

McGinnis made a **motion**, seconded by Martine, to approve the consent agenda.

The **motion carried** by the following vote:

Aye: 5 (Cheek, McGinnis, Martine, Hayes, Franken)

Nay: 0

5. PRESENTATIONS, GUESTS & ANNOUNCEMENTS

- a. **Presentation – Strategic Plan Update** – Ashley Sonoff, SSW Consulting

Start time: [06:03:53 PM \(00:03:54\)](#)

Sonoff gave a presentation covering the goals of the strategic plan, timeline, engagement summary, themes emerging from outreach surveys, and next steps in the strategic plan process. Councilors asked clarifying questions and praised the comprehensive explanation of the strategic plan process and community-driven approaches

6. STAFF REPORTS

a. Fire Department

Start time: [06:29:58 PM \(00:29:58\)](#)

Hesse, attending remotely, presented his staff report on the activities and operations of the Rockaway Beach Fire Rescue department for the month of August 2024. Hesse shared that he and Captain Grace were attending the EMS World Conference. Hesse added that the fire danger has been reduced to moderate, and noted that Tillamook County has participated in five of the fifteen State conflagrations this year. Hesse acknowledged the anniversary of September 11th, 2001. Hesse answered questions about the Nixle alert system and clarified for the Council that summer staffing would continue through October 31st.

b. Sheriff's Office

Start time: [06:38:50 PM \(00:38:50\)](#)

Deputy Kevin Grogan apologized for last month's absence due to training. Grogan summarized the Sheriff's Office report for August 2024. Grogan added that school was in session and to be aware of speed. He commented on law enforcement efforts to make connections with school students. Councilors noted a lighter activity report and expressed gratitude for the deputies' work during the busy summer period. They looked forward to possibly adding more deputies to relieve workload.

c. Public Works

Start time: [06:42:46 PM \(00:42:47\)](#)

Emerson presented his report on recent activities and operations within the Public Works department. He thanked Rachel Johansson and Jeanette Singleton for their generous plant donations for landscaping Anchor Street Park. Emerson confirmed that new signs were installed by Ramsay Signs. It was noted that Narcan installed at Phyllis Baker Park was donated by Robin Bach.

d. City Manager

Start time: [06:47:39 PM \(00:47:40\)](#)

Shepard shared a presentation providing background information on the action items on the agenda. Shepard also provided updates on Lake Lytle improvements, the Wayside Beach Access project, Nedonna Beach Water System improvements, new signs and landscaping at Anchor Street Park and Lake Lytle, upcoming public meeting dates, and a staff highlight.

7. PUBLIC HEARING

a. Ordinance 2024-04 Amending Code Chapter 31 Related to the Planning Commission

Start time: [07:01:37 PM \(01:01:37\)](#)

At 7:01 p.m., McNeilly opened the public hearing.

McNeilly explained that the purpose of the public hearing was to receive comment on Ordinance 2024-04 Amending Code Chapter 31 Related to the Planning Commission.

McNeilly invited public testimony.

Lisa Finkle, resident, testified in opposition, expressing concerns regarding reducing community representation, transparency and accountability, and impairing the Planning Commission's role in strategic planning.

Daniel Howlett, resident, testified in opposition, expressing concerns about the process for advertising and filling vacancies. Howlett advocated for bringing new members to city committees and rotating the Council liaison to the Planning Commission position annually.

McNeilly closed the public hearing at 7:08 p.m.

b. Ordinance 2024-07 An Ordinance Providing Authority and Procedures for Administrative Warrants and Creating a New Code Chapter 97

Start time: [07:08:56 PM \(01:08:56\)](#)

At 7:09 p.m., McNeilly opened the public hearing.

Debby Hunn, resident, expressed concerns regarding safety implications for city employees and advocated for a process and procedure manual to accompany the Ordinance. Hunn advocated for holding a first reading, public hearing, and second reading on different dates, and urged the Council to review the process.

Lisa Finkle, resident, spoke in opposition to the Ordinance and hoped for broader discussion regarding bringing back the police department. Finkle expressed concerns regarding residents' privacy and rights, and potential misuse. She urged the Council to seek community perspectives, particularly from those directly impacted by the ordinance.

McNeilly closed the public hearing at 7:15 p.m.

8. CITIZEN INPUT ON NON-AGENDA ITEMS

Start time: [07:15:20 PM \(01:15:20\)](#)

Ronnie Duckworth expressed frustration and concern over an ongoing drug-related issue on his street, describing a recent fire that broke out at a suspected drug house, resulting in a bus explosion. He requested law enforcement action. McNeilly commented that he would contact Duckworth.

Debby Hunn expressed shock that open litigation was discussed at a recent City Council meeting. Hunn referred to her written testimony, expressing concerns that certain Transient Room Tax (TRT) fund expenditures had been incorrectly budgeted. Hunn expressed additional concerns about election procedures, pointing out inconsistencies with the City Charter, and suggesting that issues could have been resolved without litigation.

Justin McMahan commented that he was a relator in a legal case against the city regarding the election process case and was running for City Council. McMahan acknowledged that they lost the case, but the judge deemed the case reasonable and not frivolous. McMahan stated that city's election process had been changed illegally, and expressed concerns that Ordinance 2024-02 had been presented differently in court than in public meetings. He advocated for ethics and transparency.

Lisa Finkle expressed concerns regarding a neighboring short-term rental property. She shared that the fire pit was a hazard affecting air quality and health. Finkle commented that the property's hot tub led to noise and activity extending beyond the city's quiet hours. Finkle urged the Council to enforce existing regulations and hold property managers accountable.

Rosemary Hamilton waived her time to Nancy Webster. Nancy Webster appreciated that the City was considering microphones for the Council Room.

Nancy Webster spoke in opposition to the Nedonna Wave development, asking the City to deny the entire development. She expressed concerns that development is within the DEQ Source Water Protection Area and near Jetty Creek, another primary water source. Webster stated the area's wells are vulnerable to contamination from high-density housing, construction, pesticide use, and potential saltwater intrusion. She expressed additional concerns that septic systems and sewer infrastructure could not accommodate more density. Webster raised additional concerns about inadequate fire exits and fire risks from beach fires and grass. She urged the Council to protect the area's wetlands, which are part of a saltwater marsh and critical fish-bearing habitat.

Daniel Howlett commented on the recent court case. Howlett expressed concerns that city leaders initially indicated support for removing council position numbers but later reversed their position. He expressed concern that council position numbers were added in 2014 without a vote. Howlett

expressed additional concerns about council members running unopposed, concerns regarding meeting audio recordings, and concerns about the expressed intent of the nomination ordinance. Howlett referred to his submitted written testimony and urged the public to support new leadership in November.

9. OLD BUSINESS – None Scheduled

10. NEW BUSINESS

a. Consideration of Resolution 2024-41 Adjusting Appropriations for the 2024-2025 Fiscal Year Budget

Start time: [07:41:58 PM \(01:41:58\)](#)

McNeilly explained that this resolution transfers funds within the General Fund from Contingency to the Administration Department for sound amplification equipment to address residents' concerns with the sound quality at City Council Workshops and Meetings.

No audience members wished to comment.

Martine made a **motion**, seconded by Cheek to approve Resolution 2024-41.

The **motion carried** by the following vote:

Aye: 5 (Cheek, McGinnis, Martine, Hayes, Franken)

Nay: 0

b. Determination of the Scope of Review for Land Use Appeal #24-1 on the Nedonna Wave Planned Unit Development – Phase 2

Start time: [07:43:54 PM \(01:43:55\)](#)

McNeilly explained to Delta Holderness that the scope of review determination was a non-hearing item. Holderness requested time to comment later on a non-agenda item.

McNeilly explained that the Rockaway Beach Zoning Ordinance, section 11.070(4) provides that the City Council must determine the scope of review prior to hearing appeals. He stated the City Council shall determine, as a non-public hearing item, that the scope of the review will be one of the following: (a) Restricted to the record made in the decision being appealed. (b) Limited to the presentation of additional evidence on such issues as the reviewing body determines necessary for a proper resolution of the matter. (c) A de novo hearing. (d) A remand of the matter to the hearing body for additional consideration.

McNeilly stated the City Council held discussion and consultation with the land use attorney in the workshop, and he would now entertain a motion.

Franken made a **motion**, moved, seconded by Cheek, to review land use appeal #24-1 on the Nedonna Wave Planned Unit Development – Phase 2 in accordance with Rockaway Beach Zoning Ordinance, Section 11.070(4)(B): Limited to the presentation of additional evidence on such issues as the reviewing body determines necessary for a proper resolution of the matter, with a scheduled hearing date of October 9, 2024. Additional evidence shall be provided regarding the issues and criteria raised in the Appeal.

McGinnis explained that the motion was the second option (b) listed by McNeilly. She stated that both the applicant and the appellant gave some indication of what new testimony they would like, and all of their considerations would be included in this scope of review.

Hayes declared that she was going to recuse herself from the vote, stating that she was paid by the developer in 2009 to create the big circle of wetlands that are there. Hayes stated she worked with the wetland specialist and did the signs and the nautical rope that you see around all the wetlands. Hayes said she spoke with the attorney in the workshop and he said while she might not have a conflict of interest, she might have some bias. Hayes stated she had a lot of attachment to the property and so was going to recuse herself and not vote.

The **motion carried** by the following vote:

Aye: 3 (McGinnis, Martine, Franken)

Nay: 1 (Cheek)

Abstain: Hayes

McNeilly invited Delta Holderness to provide public comment on a non-agenda item.

Delta Holderness shared a copy of written testimony submitted by Gary and Renee Corbin urging the Council to deny approval of the Nedonna Wave development. (A copy of the Corbin's testimony is included in the record for the meeting.) Holderness read aloud a statement urging the City Council to start over with a new application process for the 2008 Planned Unit Development (PUD). (A copy of Holderness' testimony is included in the record for the meeting.)

c. First & Second Reading of Ordinance 2024-04 Amending Code Chapter 31 Related to the Planning Commission

Start time: [07:51:16 PM \(01:51:17\)](#)

McNeilly explained Ordinance 2024-04 amends the City of Rockaway Beach Code of Ordinances regarding the Planning Commission. He stated this amendment was approved by the Planning Commission and reviewed by the City Council at two workshops. McNeilly explained that the ordinance was available for inspection in accordance with the City Charter.

McGinnis made a **motion**, seconded by Cheek, to perform the first and second reading by title only of Ordinance 2024-04.

The **motion carried** by the following vote:

Aye: 4 (Cheek, McGinnis, Martine, Franken)

Nay: 1 (Hayes)

McNeilly performed the first and second reading by title only of Ordinance 2024-04.

Cheek made a **motion**, seconded by Franken, to approve the first and second reading by title only of Ordinance 2024-04.

The **motion carried** by the following vote:

Aye: 4 (Cheek, McGinnis, Martine, Franken)

Nay: 1 (Hayes)

d. Consideration to Adopt Ordinance 2024-04 Amending Code Chapter 31 Related to the Planning Commission

Start time: [07:54:06 PM \(01:54:06\)](#)

McNeilly explained that with the first and second reading now complete, Ordinance 2024-04 is ready for adoption.

McGinnis made a **motion**, seconded by Martine, to adopt Ordinance 2024-04 Amending Code Chapter 31 Related to the Planning Commission.

McGinnis commented that the Ordinance broadens the Planning Commission's authority and makes it more effective. She noted that the old ordinance had strange, outdated provisions. McGinnis noted that some provisions, including limits on the number of real estate professionals, are required by state law. She explained that the Charter provides rules for appointments. McGinnis noted that the work on the ordinance began in February and included citizen involvement, and multiple public meetings.

The **motion carried** by the following vote:

Aye: 4 (Cheek, McGinnis, Martine, Franken)

Nay: 1 (Hayes)

e. First & Second Reading of Ordinance 2024-07 Providing Authority and Procedures for Administrative Warrants and Creating a New Code Chapter 97

Start time: [07:58:04 PM \(01:58:04\)](#)

McNeilly explained that Ordinance 2024-07 amends the City of Rockaway Beach Code of Ordinances, adding a new chapter in the City code that provides the authority and procedures for administrative warrants. McNeilly stated that the ordinance was available for inspection in accordance with the City Charter.

Cheek made a **motion**, seconded by McGinnis to perform the first and second reading by title only of Ordinance 2024-07.

The **motion carried** by the following vote:

Aye: 4 (Cheek, McGinnis, Martine, Franken)

Nay: 1 (Hayes)

McNeilly performed the first and second reading by title only of Ordinance 2024-07.

Franken made a **motion**, second by Martine, to approve the first and second reading by title only of Ordinance 2024-07.

The **motion carried** by the following vote:

Aye: 4 (Cheek, McGinnis, Martine, Franken)

Nay: 1 (Hayes)

f. Consideration to Adopt Ordinance 2024-07 Providing Authority and Procedures for Administrative Warrants and Creating a New Code Chapter 97

McNeilly explained that with the first and second reading now complete, Ordinance 2024-07 is ready for adoption.

Franken made a **motion**, second by Martine, to adopt Ordinance 2024-07.

Hayes commented that she shared in workshop that she spoke with the Sheriff about it and he said nobody should go on property without being accompanied by law enforcement. Hayes advocated for requiring that law enforcement accompany staff. She expressed concerns about loss of land rights and overreach. Hayes indicated she would vote no.

McGinnis spoke in favor of the ordinance, commenting that the city already has an abatement ordinance, and this ordinance gives authority for a Sheriff's Deputy to accompany staff. McGinnis added that some abandoned properties might be treated differently. At the request of McGinnis, Shepard confirmed that the ordinance gives the Sheriff's Office authority to assist.

Cheek concurred with McGinnis, commenting that there was some misunderstanding, and the ordinance allows an officer to accompany staff.

Franken suggested that no one would knowingly put city staff in danger.

The **motion carried** by the following vote:

Aye: 4 (Cheek, McGinnis, Martine, Franken)

Nay: 1 (Hayes)

RECESS INTO EXECUTIVE SESSION

At 8:07 p.m., McNeilly announced that the City Council would now recess to a conference room and into Executive Session pursuant to ORS 192.660 (2)(h) to consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed. McNeilly stated this executive session will include discussion of pursuit of attorney fees against relators in Case No. 24CV37762. He added that no final action will be taken in this closed session it is if a decision needs to be made it will be done when open session resumes.

RECONVENE REGULAR SESSION

McNeilly called the regular session back to order at 9:19 p.m.

g. Consideration of Pursuit of Attorney Fees against Relators in Case No. 24CV37762

Start time: [09:19:10 PM \(02:08:04\)](#)

McNeilly explained that the Council may now consider taking action regarding whether or not to pursue attorney's fees against relators who filed a legal action against the City that was decided in the City's favor.

McNeilly invited public comment.

Debby Hunn commented that today was September 11th and was hoping town would come together. Hunn expressed concerns about Ordinance 2024-04, stating that the state requires single topic ordinances, and one ordinance cannot cover both elections and nominations. Hunn expressed additional concerns about public notice and holding a public hearing and two readings of the ordinance on the same day. She was concerned that video and audio evidence were not allowed in court. Hunn advocated for running an open election with top three votes serving a four-year term, and next two votes serving a two-year term.

Martine made a **motion**, seconded by McGinnis, to pursue an award of attorney fees against realtors in case number 24CV37762.

McGinnis commented that there was a long discussion and consideration that took place during the executive session. She emphasized that while they can provide their reasons for voting, they cannot disclose the legal advice shared in the session. McGinnis addressed misinformation circulating within the community and expressed a desire for healing. She noted that the judge in the case clearly denied the writ twice and cited laws that supported the city's position, which was her reason for supporting the decision.

The **motion carried** by the following vote:

Aye: 4 (Cheek, McGinnis, Martine, Franken)

Nay: 0

Abstain: Hayes

McNeilly read aloud Council Meeting Rules and Procedures Section 3.13 Duty to Vote: When a question is taken, every member of the Council eligible to vote shall vote unless a Councilor states a valid reason to abstain or has a direct conflict of interest. McNeilly requested that Hayes state a valid reason for abstaining or state that she had a direct conflict of interest. Hayes stated she didn't think so unless she could step out and call her attorney. McNeilly asked that the record show that Hayes did not follow the Council rules that she voted into place.

11. ITEMS REMOVED FROM CONSENT AGENDA – None removed

12. COUNCIL CONCERNS

Start time: [09:26:54 PM \(02:15:48\)](#)

Cheek commented that she was pleased with the audience attendance and participation, and that the whole community should have input into everything that the Council does.

Franken commented that the Tillamook Bay Community College Small Business Development Center is partnering with the Economic Development Council of Tillamook County for a pitch contest, noting that it was a great resource for entrepreneurs or business owners. Franken reported she attended the emergency management meeting for water sanitation and thanked Captain Grace and the Emergency Management team. She encouraged all to view the presentation on the website. Franken also encouraged participation in the Great Shakeout. She reported on attendance at a tour of the Bone Ridge forest. Franken encouraged participation in the Sourcewater Protection Plan Town Hall.

Hayes commented on the hearing about elections, stating that three public officials testified that the Council did not pass an ordinance adding seats and one testified otherwise. Hayes expressed

concern and confusion, stating that the judge basically said I'm sorry if you don't understand that you passed that. She encouraged those who were confused to watch the testimony. Hayes expressed additional concerns that the litigation was discussed publicly for political reasons, when others were handled in executive session. Hayes felt this discouraged citizens from speaking up and found it shameful. Hayes shared additional comments reflecting on 9/11.

Martine shared reflections on 9/11, noting that none of us will ever forget.

McGinnis shared reflections on being a teacher during 9/11 and acknowledged first responders. She shared that the League of Oregon Cities' *Local Focus* magazine featured Rockaway's Anchor Street Park. McGinnis commended Bill Hassell and shared about work they were doing to acquire benches for the Boardwalk, and efforts to mitigate milfoil. She shared that they represented Rockaway with Hassell's drone photos at a Salmonberry Trail Foundation event, thanking Public Works for their help. McGinnis encouraged attendance at the upcoming Arts & Music Festival and the Great Shakeout event.

13. MAYOR'S REPORT

Start time: [09:37:35 PM \(02:26:29\)](#)

McNeilly shared slides, providing updates on an increase in visits to the visitor website, indicating that the QR was being utilized. He shared images of new Rockaway Beach Shopping Bag designs. McNeilly extended thanks to Nan Devlin and the Tillamook Coast Visitors Association.

14. ADJOURNMENT

Start time: [09:39:56 PM \(02:28:50\)](#)

Martine made a **motion**, seconded by Cheek to adjourn the meeting at 9:39 p.m.

The **motion carried** by the following vote:

MINUTES APPROVED THE
9TH DAY OF OCTOBER 2024

Charles McNeilly, Mayor

ATTEST

Melissa Thompson, City Recorder

DRAFT

City Council must DENY approval of Nedonna WAVE development

September 2, 2024

To: Rockaway Beach City Council

From: Gary and Renee Corbin

26642 Kittiwake Dr

Rockaway Beach, OR. 97136

On July 27, 2024, the Rockaway Beach Planning Commission voted to approve a modification to PUD 24-01, the “Nedonna Wave” application for development. Our understanding is that the next step in this process is consideration for approval by the Rockaway Beach City Council.

We strongly urge the City Council to deny any further development, including issuing of permits for excavation, construction, and development, of Nedonna Wave. The proposed development fails to comply with at least three legal requirements, at least one of which cannot be satisfied in any form. Those three requirements are:

1. Failure to complete the proposed development within the development window of the original application
2. Failure to comply with federal regulations governing development in coastal flooding areas
3. Failure to address critical safety requirements for tsunami evacuation and fire and emergency response

1. Failure to complete the development within the required 10-year time frame

ORS 92.040 (3) stipulates:

*A local government may establish a time period during which decisions on land use applications under subsection (2) of this section apply. However, **in no event shall the time period exceed 10 years**, whether or not a time period is established by the local government. [Emphasis added]*

Nedonna Wave has argued that a PUD is not a subdivision. However, the language of the statute clearly disagrees. ORS 92.010 (17) stipulates:

“Subdivision” means either an act of subdividing land or an area or a tract of land subdivided.

ORS 92.010 (9) further states:

“Partitioning land” means dividing land to create not more than three parcels of land within a calendar year...

The statute makes no exceptions for PUDs.

Since the 10-year window has long since closed, the City must require the Applicant to file a new application if they wish to reinstate site development.

2. FEMA wetland rules

The Federal Emergency Management Agency issued “Updates to Floodplain Management and Protection of Wetlands Regulations To Implement the Federal Flood Risk Management Standard” (44 CFR Part 9) in July, 2024. This rule update, effective September 9 2024, limits construction activities in floodplain areas – which specifically include low-lying coastal areas such as Nedonna Beach – and requires a formal, public, documented 8-step review process, summarized below:

- (1) Determine whether the proposed action is located in a wetland or floodplain and its potential to affect or be affected by a wetland or floodplain;

- (2) Notify the public of the intent to carry out the proposed action within or affecting a wetland or floodplain, and involve the affected and interested public in the decision-making process;
- (3) Identify and evaluate practicable alternatives to locating the proposed action in a floodplain or wetland, including alternative sites, actions, and the “no action” option;
- (4) Identify the potential direct and indirect impacts associated with the occupancy or modification of floodplains and wetlands and the potential direct and indirect support of floodplain and wetland development that could result from the proposed action;
- (5) Minimize the proposed action's potential adverse impacts and support to or within the floodplains and wetlands identified under Step 4;
- (6) Re-evaluate the proposed action and other practicable alternatives identified in step 3 based on new information gained in steps 4 and 5;
- (7) Inform the public of any final decision that the floodplain or wetland is the only practicable alternative; and *[assuming confirmation of all of the above steps]*
- (8) Implement the action.

The rule explicitly includes development of new housing as an “action” regulated by this process.

There is no evidence that the City of Rockaway, nor Nedonna Wave Development, have conducted any part of this process. No development in the flood zone may proceed without such review.

3. Evacuation route and Fire Safety Access

Rockway Beach Zoning Ordinance 3.142 requires the applicant to develop evacuation measures and improvements in compliance with the ordinance. The proposed application does not address evacuation route improvements.

Moreover, the Nedonna Beach area is already out of compliance with the Oregon Fire Code. Appendix D, Section D107.1, mandates that developments with more than 30 single-family dwellings must have two separate and approved fire apparatus access roads. Nedonna Beach, which already has over 400 housing units, has only one approved access road.

Allowing this development to continue escalates the safety risk – already unacceptable and out of legal compliance – for Nedonna Beach residents and visitors and places the city at risk for litigation and millions of dollars in potential liability in the event of a tsunami or fire emergency.

The City of Rockaway must deny the applicant's plans to proceed with this development and require them to resubmit a new plan which addresses these concerns, as well as the several others raised at Planning Commission and City Council meetings in the past.

Sincerely,

Gary and Renee Corbin

Good evening,

My name is Delta Holderness. I live at 9340 Song St, Nedonna Beach area of Rockaway.

At the July 18th, 2024 Planning Commission meeting, a planning commission council person asked what the definition of a PUD is vs a subdivision.

Mary Johnson answered the question by stating and I quote, "a PUD is basically an overlay to a subdivision application. It allows a developer to build denser housing." Unquote. Mary did go on to state that this is done so that the developer doesn't build into wetlands or other protected areas, also it allows reduction in the amount of street frontage. If you would like to hear her precise words that I did not quote, you can hear the question and answer starting at 43 minutes and 7 seconds during that July meeting.

Therefore, no one can state that a PUD doesn't meet the definition of a subdivision and therefore, ORS 92.040 must apply to this 2008 PUD application.

As a reminder:

ORS 92.040(3) provides that all subsequent stages of subdivision development must be reviewed for compliance with current local regulations when more than 10 years has passed since the initial land use decision.

The Oregon Court of Appeals explained the operation of this ordinance, as it allows applicants who request approval to develop a subdivision lot and any subsequent construction on the lot can follow the local government laws in effect at the time that the subdivision application was made

However, the protection provided to developers by subsection (2) may not exceed a period of 10 years."

The ordinance with its ten-year time limit makes it so that any further development after 10 years must be approved under a new application, based on contemporary standards and regulations.