

CITY OF MCCLEARY
City Council Meeting
Wednesday, February 24, 2021

CALL TO ORDER

Mayor Orffer called the meeting to order at 6:30 pm.

ROLL CALL

Wendy Collins took roll call. Councilmember's Jenna Amsbury, Brycen Huff, Jaron Heller, Chris Miller, and Joy Iversen were all present.

STAFF PRESENT

Wendy Collins, Clerk-Treasurer, Todd Baun, Director of Public Works, Steve Blumer, Police Chief, and Chris Coker, City Attorney were present.

PUBLIC COMMENT

Mayor Orffer announced we are using some new audio equipment and is hoping the sound has improved.

Councilmember Iversen asked if the Council can participate in the results of the asphalt and aquifer investigation conversation and Mayor Orffer confirmed they would be able to.

Suzannah Winstedt, 527 W Simpson Avenue

She said the audio is much better except the roll call person was hard to hear.

CONSENT AGENDA

- Minutes from the February 10, 2021 council meeting.
- Approval of accounts payable vouchers Vouchers/Checks approved were 48856 - 48923, including EFT's, in the amount of \$254,525.59.

It was moved by Councilmember Amsbury, seconded by Councilmember Iversen to approve the Consent Agenda. Motion Carried 5-0.

STAFF REPORTS

Public Works, Water/Wastewater, Building, Light & Power, and Finance submitted written staff reports.

LEGAL UPDATE

Chris Coker said the council should have all received the report from the investigator by Mr. Hughes and it is self-explanatory.

He had a meeting with Grays Harbor County Public Health today.

Things are moving forward with various agencies that are looking at the piles of asphalt. The audio started cutting out and Councilmember Iversen stated she doesn't know the circumstances with Chris Coker, but she

would really like it if he could start attending the meetings in person because the last few meetings she hasn't been able to hear what he is saying. Chris said the internet is spotty in his area.

Mayor Orffer said we received the report from the investigator and it was sent out to all of the council and they have had a chance to see it. Essentially, the investigator did not find anything in what he discovered in talking with people and going out to the site that there was anything done by staff or anything buried like asphalt or concrete. You can read the various responses to questions by the various by staff. From an internal perspective, Chris and herself have talked briefly about this and wanted council to have the opportunity to read it and have a discussion. She yields the floor to council if they have any questions but before we delve into that, she wants to let them know the city met with the county today out at the well site and she met with them, as well, at 7:30 am and she will have Todd provide a summary from that meeting since we do not have anything in writing yet. We received a letter from the County, which we also emailed to council. In response to that letter, we set up a meeting with them via Zoom and met with them out at the site today. In addition to their request, we dug holes and Todd is going to share feedback from what we heard today.

Todd Baun said he dug six holes, and in those holes they found soil consistent primarily of clay, silt, sand, and gravel size particles, and de Minimis amounts of asphalt, and concrete, and wood, and material like that. They are going back to make reports to Department of Ecology and Department of Health stating they will have a recommendation for us. Right now, the County is in agreement to us proceeding with crushing the material like we have for the piles of concrete and asphalt. Once that is crushed we can start using it for public sites and for road construction materials and once that is all gone, they have no issue with that site.

Mayor Orffer added, that was the intent of those piles to begin with. The concrete and asphalt were retained so it could be crushed down and used in other areas. That is all very standard practice and the County has no issue with that. We did explain that barring Covid, we would have probably already utilized those materials, but a lot of things came to a halt last year. She said it was a very good conversation and it's important to note is that they did not find buried asphalt or buried crushed asphalt, which was circulating at the allegation that the city had buried big amounts of asphalt.

Todd read the definition of "De Minimis", which means present in an amount as to have negligible effect on the look, characteristics, use, or impact to human health or the environment of a material. The presence of man-made materials such as, but not limited to, paper, plastic, metal, and demolition debris that can reasonably be removed or that may become a litter problem is not de Minimis. All the terms that we were using is based off of the WAC 173.50 and that is what the Department of Health and Department of Ecology are looking at us for.

Mayor Orffer said we were not asked to do water testing, but we volunteered it. Todd added we are going to dig several more holes on the side where they tell us to dig and we're going to do water testing, because we are in the backside of the one-year recharge area for that site and they basically said that stuff has been sitting there for over a year and this April it will be two years. They said that if in two years, it would have given the water enough time to do what it is supposed to do so. Councilmember Iversen added, leaching into the soil, and Todd said yes, and we are voluntarily going to test it and we will get the results of the test. Our engineer was out there also and they were fine and there is no concern with health or water system.

Chris Coker stated obviously he is not an engineer and they are using contract documents and talked to the engineer from Skillings Connolly because he wanted to know where the 100 foot buffer came from and he found

out it came from the engineers. He said, as Todd stated, the piles were designed to be put there and they are probably there a little longer due to various factors, part of which is the investigation and also the covid situation. Chris believes things are moving forward in a positive manner and it looks like the issue will be resolved shortly.

Councilmember Iversen said there were community members that were concerned about specific areas out there and she asked Todd if he knows of the areas they were concerned about and Todd responded he believed so. Councilmember Miller asked Todd when did he dig those six holes and Todd stated they were dug last week and were inspected today. He said he offered to dig more, if they wanted him to but they had seen enough and didn't care to have any more dug. He asked if the Department of Health wanted more and they will let us know if they want us to dig more holes. Councilmember Iversen asked if the water testing includes the additional items to be tested that we normally don't test that might come from asphalt. Todd responded we will do those specialty tests for this situation and we are required to do those tests anyway. Councilmember Iversen asked if those tests will show if the asphalt is leaching into our wells and Todd said it will show if it is leaching into our groundwater.

Councilmember Miller asked who all was out there today and Todd stated Rob King who is an environmental specialist from Grays Harbor County, Jeff Nelson who is an environmental supervisor, Patrick Skillings from Skillings and Connelly, Brenda, and Todd. Councilmember Miller asked why you haven't invited the whistleblowers, who stated they are witness to the buried asphalt, to go out there to the site and point out where they believe it is located and Todd responded, he doesn't know. Councilmember Miller went out there on Monday after talking to the Mayor to look at the holes and the average hole was three feet and the one at the south end was four feet deep. In the investigation, they said the asphalt is 5-7 feet underneath the dirt so we haven't dug far enough down to even show. Todd is saying he doesn't know, which is fine, but based on the investigation, they are saying they were told to cover it with grass seed and trees and in the area he saw the eastern half of the site wasn't even touched. It looks like all of the holes were on the outer perimeter and there weren't any in the middle. He asked Todd why he didn't dig any in the middle and Todd replied he dug six holes that are spread out for a presentation of the site and he asked the county if they wanted additional holes or to dig deeper and the county said no, they were fine and they measured them.

Todd added, the holes that they dug went down to the native soil and stopped at a foot below the native soil. To dig past native soil doesn't make sense. If it was dug up, it would show it was dug up. It doesn't make sense to keep digging past native soil. Councilmember Iversen asked if that dirt was disturbed, he would be able to tell and Todd responded absolutely.

Mayor Orffer stated the gentleman from Grays Harbor County, Jeff, is willing to come to a council meeting and answer questions because we have all told him this is not our expertise and she is not a soil scientist, engineer and doesn't know anything about dirt. Councilmember Iversen thinks that would be wonderful. Jeff can assess the situation and explain it. For them to say that the holes out there are adequate and they can devise what they can get out of that, who are we to question it, I guess? We were standing there and had the equipment ready to go and told them to tell us where to dig and how far to dig and we will do it.

We cannot take whistleblower employees out there because they have confidentiality protection. She said she cannot tell Todd to take so and so out there because they are protected with confidentiality. Councilmember Miller stated you can ask them, you don't have to tell him.

Councilmember Iversen said the people in the community that have these concerns can be represented and she believes they formed a group and maybe one of their group members can go out there and say this is the area we are concerned with. Todd asked how we can find out what area they are concerned with without getting the information from the whistleblowers. Councilmember Iversen asked if that is where the community got their information and Todd responded according to the investigation, yes. Mayor Orffer said they received a letter from someone.

Mayor Orffer said this is the thing, I go back again by stating I don't know what good it does for me, or anyone else in the community, to go out there and say I want you to dig a hole there because we don't know what it means. She has no issue if they want to send someone out there with someone from the county that understands dirt that would know where to dig and when to stop because like Todd said, why would we disturb native soil. To be honest, she doesn't even understand what native soil is. How would someone know that if it's not their expertise?

Councilmember Iversen said this has become such a concern by our community and she wants to make sure that, assuming there is nothing wrong out there, that their questions are answered and they feel safe drinking the water. She knows one lady who she feels bad for, is afraid to give the water to her animals or her family. Councilmember Miller has also heard from a couple of those, too. She wants to make sure that we adequately answer that so these people feel safe in the community. She thinks it is very, very important no matter what the circumstances are.

Councilmember Miller said that is the problem, we keep answering but the answers are not satisfying because they are not seeing it. That is why back in December and January and he is saying it again now, we need to have a special meeting and go dig so they can see it so we can resolve this thing once and for all. It will either vindicate Todd or it will vindicate the whistleblowers and then mitigate whatever is in there, if it is there. All we do is dance around and we say we're being transparent, but we are not. We are not giving the appearance of being transparent. This is going to keep on going and every two weeks we will keep being beat up on during public comments.

Councilmember Amsbury said it also helps us down the line after we have gone out and vetted this so years down the road, we don't get a lawsuit that says you guys knew this was there and you did some part of a review, but not all of it. One portion of the parties were out there choosing where to dig and choosing to go out with the investigator and that is where the appearance of being fully transparent and looking at the whole issue so that we can say we did everything we could have done in this instance and we can defend that if comes down five years down the road if we get one of those bad tests and they come back and say we brought this up and you guys didn't fully do this. She is not saying anyone is in the wrong here, it helps us to let these people have their say, show us where it is and let's dig in those spots and verify. Maybe they are spots we already dug, but we just don't know. That is where the appearance comes in of verifying the people's voices have been heard and we can put this to rest so we don't have to have worried citizens. We can say we fully did everything we could and can show this is a concern because this is our water and its people's safety. As a council, at least for her, the people's safety is her utmost concern and she thinks we can agree to that.

Todd asked her if she is saying it is not fully vetted by having the county, representatives of ecology, department of drinking water, and L&I. Councilmember Amsbury said she thought Todd said he didn't know where it was. Todd said every state agency he knows of has been up to the site and has signed off and said everything is good here and are you saying that is not fully vetted. Councilmember Amsbury said Environmental Health has not signed off on it yet. Todd asked her if they sign off will it be fully vetted and Councilmember Miller responded not to the public. Todd asked if the public ever going to be satisfied.

Mayor Orffer said this is not productive conversation and is going to put an end to that. She added, she has no issue if somebody wants to go out there and say they want a hole dug here, but you have to understand that the county had the complaint and they know where people are saying it was and when they came out and the holes that they inspected, they were satisfied with what they were looking at. Councilmember Iversen asked if they were satisfied and Mayor Orffer said yes. Councilmember Amsbury said they don't have the investigation report and Mayor Orffer said they don't need the investigation report because the complaint had already told them the information that they had gotten.

Mayor Orffer knows who the whistleblowers are because they came to her. She can go to those people and ask if you want to go and show me where to dig a hole and I will do that tomorrow. If they want her to dig a hole or have Todd dig a hole other than where he dug a hole we'll do it.

Councilmember Miller said he appreciates that and then lets resolve this thing and be done with it. Councilmember Iversen asked if we will have to have a special meeting and announce it and Councilmember Miller said we are announcing it right now. Mayor Orffer said we need to first see if there is an employee that wants a hole dug somewhere else.

Councilmember Iversen asked who the person was that was willing to come to a meeting to talk with the council and asked if it was Ron King and Mayor Orffer said no, and Councilmember Amsbury said it is Jeff Nelson. Councilmember Iversen thinks that would be great. Mayor Orffer said he offered but we first have to wait for the county's written report and then he is happy to come and answer questions.

Chris Coker said, in response to digging the holes, at the meeting yesterday with Grays Harbor Environmental Health that is exactly what he mentioned to Rob King and Jeff Nelson. He specifically asked them to tell us where they want us to dig the holes and we will have a machine out there tomorrow and he understands the machine was out there today and Todd confirmed it was. He thinks the recommendation is great. If the council wants to do a special meeting out there and he agrees with Mayor Orffer about keeping the anonymity of the whistleblowers, but if somebody wants to go put a big "X" where to dig and if that's going to help solve this then good. The weather is going to be decent tomorrow, then go do it tomorrow. Obviously we have to give notice if we're going to have a meeting. He spoke with Todd and we did not want to direct where the holes were going to be dug. He's a little disappointed in Environmental Health that they didn't dig their own holes yesterday. Why they didn't, he doesn't know.

Mayor Orffer will put the question out there to see if there is a place that an employee thinks we have not looked at and Councilmember Iversen said they may just verify that yes that is a place they were concerned about. Councilmember Amsbury asked if that could be known to the council because she feels like if it is done in private and not with the citizens or the staff member but have them show the spot then have something so that

it's not just a couple of people so that we can see what was done or have a report or something because that is where some people are having a problem, they want it verified and not just by a couple of people.

Chris Coker suggests, as long as we don't have a quorum, is to send two councilmembers out there to be the representatives of council. Councilmember Heller said he will gladly volunteer. Councilmember Amsbury said the problem is all of them want to go and Chris Coker said we do have the option of calling a special meeting , but like we do in committees, if you folks are comfortable with having two representatives to go out to the site and answer the questions, then do this. He doesn't want anyone to question the validity of what is being done but it is the council's call. Councilmember Iversen is fine with two members of the council.

Chris Coker recommends as a courtesy to contact people in the group (CARES) to go out there, too. Councilmember Iversen thinks that would be very helpful. Councilmember Huff believes there are five or six members in the CARES group.

Todd Baun wants to reiterate this is a dump site and it's muddy and wet and there are piles of concrete and asphalt and liability falls upon the city if you start having people come out. Mayor Orffer said we will find out tomorrow if there is a place that has not been done that they want done. Chris Coker said Todd's comments are duly noted but that is a calculated risk the city needs to take. Mayor Orffer added, if they (whistleblowers) don't have a spot maybe one of the community members can come and show us a spot. We are happy to dig a hole wherever they want. We wanted to dig holes before now but none of the agencies that have come out have wanted a hole dug. We offered every one of them and none of them wanted us to. We were not digging any holes unless we were asked.

Todd Baun said another thing conveyed by Jeff Nelson is that is our well site and it is a wellhead protection area and that people are not to be out there without authorized city personnel at any time. You have to be escorted out there according to our wellhead protection. Councilmember Iversen asked if people are not to drive over there and Todd responded no, they are not to be on site. Mayor Orffer said where the sign says no unauthorized people past this point, there's not supposed to be anybody past that point. It's not just a violation of city code, but it is actually a federal violation. Jeff recommended we have a little more security as a deterrent from people going out there. It's not that we don't want anybody to see it, we are happy to take people out there. We just don't want anybody to get hurt out there.

Councilmember Iversen thanked them for the information because she has been getting letters. Councilmember Miller said it doesn't matter what we do, it's never enough and he trying to find out what "enough" is so we can finally get past it. Mayor Orffer said the thing we have to remember is as a council, we have to do everything we can do, like Councilmember Amsbury said. We cannot keep chasing something once we have exhausted everything we can do. At some point we have to say we have done all these things and unless there is anything else that anyone can recommend or some agency recommends to us, at that point, we have to be willing to move on. We are trying to find a resolution and we were very candid when we talked to the county today. There was no intent on any part of anybody to come out here and do something wrong. This site was identified and selected by the engineers that designed the project. These are people who are experts in what they do, they are certified and they got the project approved and signed off by several different certified people and state agencies. We followed that plan so there was never an intent on our side and we didn't even pick the site. That was their pick. If something was done that shouldn't have, we are happy to correct it. That hasn't changed from the beginning. Our position was did we do something wrong and if we did, how do we fix it.

Councilmember Amsbury asked when the city gets a report back from Environmental Health, would they forward that to the council and Mayor Orffer said she will keep the council informed of anything we get and we send it out to them.

Todd said another thing is Environmental Health said that the WAC's changed in 2018, which was in the middle of our design so our original design was okay. Everything was not lined up when we went out to bid in 2018 and the regulations had changed and we missed it and they missed it. Councilmember Miller asked if that is when he went out for bid the second time and Todd said yes it was. The regulations changed in August 2018 and we went out to bid in September or October.

MAYOR'S COMMENTS

She included a quote in the packet from Capital City Press for a banner that will accompany the Lindsey Baum and mission children's awareness month and magnets that could be utilized on vehicles and the city would have them on marked police vehicles and any other city vehicles that want to put them on there and the we are giving the extra quantity that is being made to the Justice For Lindsey Baum Group for them to distribute them whether they do it for donation or whatever, but we are having extra made for them to utilize. A door decal is also being made for the police department door. That will give a year-around fixture reminder for the general public. Mayor Orffer has been working with Ms. Baum on the design and she has had all of the say in the design. Mayor Orffer hired a designer to create the artwork and she forwards it to Ms. Baum who gives back edits and feedback so once you see the final printed material, it is all her approval.

Mayor Orffer is asking council for permission to move forward to have these things created and you can see the total for all of these pieces is \$1,155.72 and the designer is charging \$250.00 total. She designed all three pieces for \$250.00 and we have not received that invoice yet. The cost will be coming out of current expense.

Councilmember Amsbury asked if we have to worry about gifting of public funds and Mayor Orffer said there is a regulation that allows for certain expenditures for solving crimes so it's a little bit different. She asked Chris Coker to research that and if there's an issue with giving them the magnets then she will personally pay for those herself and give them to the group.

Councilmember Miller remembered the Mayor said something in the past about putting the magnets on the vehicles and he wondered what they would do with 250 magnets and Mayor Orffer said it's an effort to solve a crime and if there isn't an exception for that cost of \$582.50, she will personally pay that amount for them. She asked the Council to approve the purchase if legal counsel receives approval for the purchase and if not, approve the purchase without the magnets and she will pay the \$582.50 herself and the city would pay the difference.

Councilmember Huff understands the lights, banner, and door wrap are all things we agreed to purchase when we passed the resolution, but the car magnets are what he has a problem with. Magnets get weak, they fall off, and can damage people's paint. He supports the other purchases but he would like to see the Mayor limit the magnet count to cover the city vehicles and Mayor Orffer said she can take a look at that. She confirmed we keep our police vehicles for five years and she doesn't know if a magnet will hurt a police vehicle in five years' time. She can ask Chief if there is an issue. Councilmember Huff prefers vinyl decals and is not a big fan of

magnets and thinks the decals make more sense. Councilmember Miller asked how many we would be keeping and Mayor Orffer said we can keep twenty here for city and police vehicles.

Councilmember Iversen asked if they can approve the expenditure and if the amount changes because we choose to do the decals instead of the magnets. Mayor Orffer said the group wants the magnets. Whether we use them or not, we would like to do this. We have been designing a magnet and it's what Ms. Baum approved so if we make any changes, she has to take it back to her. The only change is if we do a decal in addition to the magnets.

It was moved by Councilmember Iversen, seconded by Councilmember Miller to approve the purchase of \$1,155.72 based on legal signing off and if the magnets can't be handed off to the Justice for Lindsey Baum Group, Mayor Orffer will pay the cost of \$582.50. Motion carried 5-0.

The city has red lights in honor of American Heart Month and we are trying to do some public awareness recognition at city hall.

The reward money for Justice for Lindsey Baum is currently at \$36,000, which includes an anonymous donation of \$5,000 that was donated many years ago and Wendy maintains that account. The group is requesting the city donate an additional \$4,000 to make the total reward fund \$40,000. She did some research with Chris Coker and also reached out to MRSC and there is something in RCW 10.85.030 that states:

The legislative authority of any county in the state, a port commission, or the governing body of a city or town, when in its opinion the public good requires it, is hereby authorized to offer and pay a suitable reward to any person or persons for information leading to:

(a) The arrest of a specified person or persons convicted of or charged with any criminal offense; or

(b) The arrest and conviction of a person or persons committing a specified criminal offense.

There is an exception in the law that allows police departments to offer a reward to gain information to solve a crime. Also included in the RCW discusses if you have crimes against city property you are also allowed to create a reward in order to solve the crime.

She is asking council if they want to commit \$4,000 that would be given if and when someone comes forward providing information that leads to the arrest and conviction of the person responsible for this crime. We would account for the money and maintain at their discretion if and when the money be released. She said at that time, a committee would be formed to discuss if the criteria met the requirement to disburse those funds.

Chris Coker agreed with the RCW understanding and said it is pretty straight forward so if the city wants to do it, they can do it. Councilmember Amsbury asked him if they would have some type of resolution authorizing these funds for this purpose and the council at the time will determine if the criteria has been met and Chris said there really isn't much criteria and it would be the governing body's decision. She offered to check to see if the county has something for the criteria in a past reward resolution.

Mayor Orffer is bringing this up tonight because she wants the reward money accurate on the printed banners and magnets. We will hold off on printing until the council decides on this and they don't have to decide tonight.

Councilmember Heller prefers to wait until the next meeting. Mayor Orffer will add it to the next meeting and hold off on the printing.

SPEED LIMIT DISCUSSION

Councilmember's Huff and Heller met with Paul Nott, Todd Baun and Chief Blumer and decided to bring to council the 40 mph zone and wants to ask the DOT to drop it to 30 mph. Also, on 108 they want to add additional signage of lower speed. He spoke with Chief and Wendy, too, to add signs under the stop signs at the three-way stop intersection at city hall stating, "Yield" to the traffic to the left or right to eliminate confusion. Mayor Orffer said we have asked for that before and were denied but we can do it again. Councilmember Huff thinks it's a reasonable request and all who met agree.

Councilmember Heller said they also discussed additional signage where people on 108 going onto Summit to identify there is no stop on Summit and he is hoping there's some additional signage that can possibly be found.

Todd said we will make the request and DOT will come out and do a traffic study to verify the request is necessary and they will either deny or approve.

PLANNING COMMISSION DISCUSSION

Our current code requires five people for the planning commission. Councilmember Miller spoke with Todd and was told a planning commission would benefit him in some of the things he is doing. He thinks we should drop to three people because we are having a hard time filling the civil service commission vacancies. The Ordinance and Policy Committee will review it, which falls on Councilmember's Iversen and Amsbury. Councilmember Miller asked if the civil service commission has to live inside the city limits because someone who lives right outside of the city limits asked if they qualify and Chris Coker thinks they do but he will check to see if it is required.

Mayor Orffer said she knows councilmember Miller is interested in the planning commission so he should converse with Todd and Todd can relate back to Councilmember's Amsbury and Iversen so there will not be an issue with a quorum.

SWRTPO INTERLOCAL AGREEMENT

Todd reported the Southwest Washington Regional Transportation Planning Organization (SWRTPO) has presented the amended and restated interlocal agreement. The five counties each have their own council of governments that all come up with their own region transportation plan. This organization tallies all five counties transportations priorities. No money is involved and it is a great organization.

It was moved by Councilmember Huff, seconded by Councilmember Amsbury to authorize the interlocal agreement with SWRTPO and to move forward with a resolution to be adopted at the next council meeting. Motion carried 5-0.

TSI CONTRACT

The TSI Contract was introduced at the last council meeting and this is the cleaned up version to move forward with our software updates. It was approved in the budget for 2021.

It was moved by Councilmember Iversen, seconded by Councilmember Huff to approve the TSI Contract. Motion carried 5-0.

COUNCILMEMBER UPDATES

Councilmember Huff met last week with Andrea Watts from the McCleary Civic Renewal Council and Suzannah, a resident to discuss a city clean-up day. Andrea gave him a waiver sample he sent to Chris Coker for approval. Councilmember Amsbury thinks this is great and is surprised how garbage is out there from the last time they did this. Chris Coker asked if we have volunteer insurance under our coverage. Wendy will check with Lindsay and let him know. The city will provide the garbage bags and dumpster space.

MAYOR'S UPDATE AND COVID-19 UPDATE

We are still providing expenditure reports and continuing our covid response plan. We sent an email to all staff asking for any requests, if they know the plan, and if they have all supplies necessary to continue operating under covid-19 requirements. Wendy provided a copy of our plan to L&I recently. We continue to work with the community, and the moratorium on shutting off utilities has continued and people continue to use LIHEAP money.

We had an outreach from Lemay and are able to do the traditional clean-up day in April. Council agreed to move forward.

PUBLIC COMMENT

Max Ross, W. Ash Street

He wanted to wait to see what the council had to say about the report before he said anything. He read through the investigative report and it seems the investigator interviewed a handful of people and some said there was asphalt buried and some said there wasn't. The investigator then went and looked at the surface of the site and came to the conclusion there was nothing there. This is a whistleblower complaint and the public is looking at the fact the whistleblowers have not been given the opportunity to show where the asphalt is allegedly buried. He thinks the public would put this to rest if the whistleblowers were given the opportunity to direct the actual physical investigation. He knows their identity has to be protected so he suggests the city provide them with an aerial image and have them mark on the imagery where and how deep to dig. You can use the GPS coordinates to go dig on those coordinates.

He is a professional soil scientist and is a soil project leader with USDA. There was a comment made earlier that they dug to a depth and the soil wasn't disturbed. That is not possible. You can't tell soil disturbance at a certain depth, especially in the winter months when the soil is saturated. It is realistically not possible. The only way you can tell soil disturbance is you look at the surface and it's really obvious.

He spoke with one of the Environmental Health staff at the county today for about a half an hour to see what the state of the investigation was and he was told a difference from what was said earlier in the meeting. They told him there was a complaint made to the county about asphalt being allegedly buried. When the county receives a complaint like this, it is up to the defendant or organization that is being accused of the violation to prove that a violation did not occur. So the county notified the city and they were given a window of time in which the city has to prove to the county that there is no asphalt buried. As of right now that burden of proof has not been met. Someone mentioned earlier why doesn't the county just go out there and dig holes is because it is not up to the county to make this determination at first. When the time limit is given to the city to prove it, they have that time to respond. The county isn't going to go out there and dig unless the city fails to provide the

burden of proof. The county would then have to itemize the time, equipment, and resources spent on the investigation and then chase the city down to bill for the investigation. That is why the county hasn't done a physical investigation yet because they are waiting for the time window they gave the city to expire. As of this time, the city has not provided that burden of proof.

What the county did say was their preliminary investigation looked at aerial imagery with photos from 2018 show trees forested on entire site when aerial photos from 2020 show one half acre cleared in area that wasn't supposed to be cleared, so that was suspect. On top of that, the whistleblower and public complaints of material being dumped at that site is what triggered the investigation.

Part of the reason the burden of proof has not been met with the county is that city officials that are involved in the complaint have been directing the field investigation. He is not familiar with the structure of city employees but anyone involved with the construction project and anyone involved in supervising the construction project should not be the one to be taking the county out and directing them where to dig and where to look. The city should provide an investigation that is objective. If the city wants to dig their own holes do in a grid pattern at depths deeper than what was alleged to prove that nothing was buried there. The city could hire someone to use ground penetrating radar to show density and continuity in the area. It has to be an objective investigation or the complainant needs to direct the investigation and not someone that was allegedly involved in the activity.

Todd Baun asked Max Ross who he spoke to at the county and he said it was Rob King. Max added he called him on his lunch breaks using his personal phone and did not use government resources. His career is in natural resources and he takes his job very seriously. He is calling because he has lived in McCleary for three years and he wants clean drinking water and he doesn't want to see the city tied up in lawsuits in a drawn out legal battle and fines related to critical areas violations. He usually takes the backseat but he is following this issue closely.

Mayor Orffer said the city received the letter from the county last week, which was their first notification from them and yes, we are within our time period to provide the information that they seek and to prove what was or wasn't done. As discussed earlier, she is offering to those employees that are alleging there was something buried the opportunity to show her, since she knows who they are, where they would like us to dig. It doesn't have to be Todd digging the holes but it has to be someone qualified to operate the equipment. This is why we hired an independent investigator to perform that part of the investigation because she was not going to have herself, Chris Coker, or Todd doing that part of the investigation. Now that the city has received a letter, it is the responsibility of staff to respond.

Max Ross added when the whistleblowers choose where to dig, they need to dig to a depth deeper than alleged. If that is done and no asphalt is there then that would satisfy himself and others involved and they can put the issue to rest as a big misunderstanding. The reason this is dragging on and on is because the allegation were made small advancements in the investigation have been made. For the people that are concerned about what is going on, the investigation steps are not putting people's minds at ease. He thinks it would be great for a couple of city council members go out onsite where the whistleblowers choose to dig and he is happy to go out there as well. You don't need a master's degree to know what chunks of asphalt look like but he is happy to be there and give people a history lesson on soils in the geology area. This is the proper thing that has to be done and once it's done, people will be satisfied.

Angela Rittinger, Main Street,

She also has received feedback from the county and it's stunning the discrepancies between the information in the emails that she has from Rob and the information from what the Mayor and Chris Coker are saying this evening. It will be interesting to see how this plays out and she won't bore the people with reading the emails she has from him, but as was mentioned earlier by a councilmember, it is time for some transparency and quit running circles. This independent investigation was a joke. She called it before the report came out because she knew if she said it afterwards that would not be a good look because she knew it would come out in favor of the city.

When you have people saying they were standing on the pile of asphalt with Todd Baun as the dirt was being spread over the top of it and this independent investigator doesn't think that warrants anything beyond him saying there isn't anything going on is just absolutely stunning.

Ms. Rittinger was also interviewed by the independent investigator. They redacted the names of the whistleblowers and listed them as witness 2, 3, 4, and 5 but you didn't redact any of the information that completely exposed them. She read aloud examples from the investigation showing the exposure of the whistleblowers in the investigators report. She said one of the whistleblowers recanted his statement and it is very disappointing and suspect. All she is asking for is some transparency, get to the bottom of this, and let's fix it for the sake of the community. She doesn't care about anything else. As Councilmember Iversen mentioned earlier, and she is happy she took this to hear, about a community member that is afraid of giving her children and pets simple tap water. This is something we need to consider is that this goes beyond Todd, Chris Coker, and the Mayor. This affects every single community member in McCleary, including the folks on a well. There is even asbestos buried according to these folks. She appreciates every single one on the council who is supportive of this tonight.

Monique Buechel, 427 S 3rd Street,

Last week she asked about the mailboxes and the postmaster said the ones installed were not the ones he approved and Todd said he was going to call the postmaster the next day. She asked Todd if he did that and Todd said he hasn't reached out to the postmaster yet but they are removing the old mailboxes. She said it would help his case if he actually did things he says he will do. Maybe he will be more believable.

Mayor Orffer said just to reiterate we are planning on giving the employees that were involved an opportunity. In regard to the redactions we redacted what we were told to do legally. She doesn't know what to say other than that. Our clerk-treasurer is the public records person and she worked within the legal constraints of what can be redacted before she sent out the report to anybody and before it was given to public request. We redacted what we were advised to do. Wendy Collins stated she redacted exactly what she was advised to do by the attorney, Chris Coker. Councilmember Miller said it is a failure on the investigator because we are such a small group of people and he was able to figure out who they are and he doesn't know any of them. It is too small of a community and he should have been more aware of that.

Mayor Orffer said the mailbox situation has been going on for a long time. We were going to install a group mailbox in that area and the postmaster at the time wanted that. A different postmaster came on board and didn't want that so we got the ones the new postmaster wanted and had those ready to go and then he said he didn't want those ones and wanted a different kind. We looked for those and we cannot find the brackets that are required. The postmaster looked for them and he couldn't find them either. We have tried to accommodate what the postmaster wanted. We are taking down the old boxes. We cannot choose which boxes we get, they

have to be approved by the postmaster. The postmaster wanted bigger boxes to fit packages. We just can't locate the required brackets.

Mayor Orffer said our next move is to take down the old mailboxes and put up the new ones whether they are big enough or not.

Monique said there is a huge rut of mud by the mailboxes and it is a muddy mess every time you get your mail unless you getting it in your car. She also spoke with the postmaster and he told her the city ordered the wrong ones and not the ones he approved. She is frustrated and so sick and tired of going to get her mail in the ones that are falling apart on Oak Street.

Mayor Orffer will confirm with him the old mailboxes need to come out and she can go in and have a discussion with him about the mailboxes. The pathway forward is to get the new boxes installed and we have tried to accommodate the postmaster. Monique said the postmaster said we can't use the new ones because the city won't have to fix the issue because once he uses those the city won't have to install the correct size he is requesting. Mayor Orffer said to reiterate, the boxes there meet or exceed the requirements and it is his preference to have larger size boxes so carriers won't have to take them to doorsteps. We are not talking about inadequate boxes that are currently there. Monique just wants mailboxes installed and for someone to address the mud issue. Mayor Orffer will have public works take a look at that.

Todd said to clarify, on May 17, 2019 the postmaster did approve the WSDOT standard plan for the boxes and for the mailboxes themselves.

ADJOURNMENT

It was moved by Councilmember Iversen, seconded by Councilmember Amsbury to adjourn the meeting at 8:25 pm. The next City Council meeting will be held at 6:30 pm on March 10, 2021.