

# MINUTES OF THE PROCEEDINGS OF THE CITY COUNCIL

February 19, 2019

The minutes of the proceedings of a special meeting of the City Council of the City of Coos Bay, Coos County, Oregon, held at 7:00 pm in the Coos Bay Public Library's Large Conference Room, 525 Anderson Avenue, Coos Bay, Oregon.

## **JOINT MEETING OF THE CITY COUNCIL AND THE CONFEDERATED TRIBES COUNCIL OF COOS-LOWER UMPQUA-SIUSLAW TRIBES**

### **Those Attending**

Those present were Mayor Joe Benetti and Councilors Drew Farmer, Stephanie Kilmer, Phil Marler, Carmen Matthews, and Rob Miles. Councilor Lucinda DiNovo was absent.

Confederated Tribes Council of Coos, Lower Umpqua, Siuslaw Tribes (CTCLUSI) present were Councilors Doc Slyter, Debbie Bossley, Doug Barrett, and Josh Davies.

City staff present were City Manager Rodger Craddock, City Attorney Nate McClintock, Finance Director Nichole Rutherford, Deputy Finance Director Melissa Olson, Library Director Sami Pierson, Public Works and Community Development Director Jim Hossley, Community Development Administrator Carolyn Johnson, Fire Chief Mark Anderson, and Police Chief Gary McCullough.

Also present were CTCLUSI Culture and Natural Resource Director Margaret Corvi, Oregon State Historic Preservation Office (SHPO) Associate Deputy State Historic Preservation Officer Ian Johnson, SHPO Natural Register Program Coordinator Robert Olguin, SHPO Assistant State Archaeologist John Pouley, and Department of Land Development and Conservation (DLCD) National Resource Specialist Amanda Punton via telephone conference.

### **Public Comments**

Kara Lincoln, Coos Bay asked who to submit a transitional plan for trash pick up, was concerned of the possibility of Jordan Cove without a plan for toxic trash clean-up. City Manager Rodger Craddock stated Ms. Lincoln could submit something in writing to him directly and he would find out who it should be forwarded to.

### **Presentation of an Appreciation Plaque for Amy Kinnaman**

Mayor Benetti presented Acting Finance Director Amy Kinnaman with a plaque in appreciation of over ten years of service to the citizens of Coos Bay as she served in several roles within the Finance Department.

## **Presentation of a Retirement Plaque for Tony Wetmore**

Mayor Benetti presented Police Officer Tony Wetmore with a plaque in appreciation of his over twenty-five years of devoted service to the City of Coos Bay and the Coos Bay Police Department.

## **Presentation of Confederated Tribes Traditional Cultural Property Historic District Application and Potential Impact on Land Development Process for Coos Bay Properties**

The purpose of the meeting was to:

1) **Learn from the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians Tribal Council (CTCLUSI) why a Traditional Cultural Property Historic District (TCP) was desired.** The application for the TCP noted "*The proposed district includes portions of private and public land in the cities of Coos Bay, North Bend and adjacent areas in Coos County. It contains over a hundred and fifty contributing features associated with the history, culture, and beliefs of the Coos People. A primary Tribal objective is to perpetuate the Tribes' unique identity through preservation of Cultural Artifacts and sites of cultural, sacred, religious and historic significance.*" Discussion between City staff, Tribal Council, and their staff indicated additional objectives: to compel the federal government to consult with the Confederated Tribes whenever federal projects, activities, or programs planned in the estuary area and cement local government recognition of Confederated Tribal land inside and outside the Estuary area where consultation on land development applications with the Confederated Tribes was desired to assure that ancient tribal resources were not disturbed. The City's Comprehensive Plan already required consultation with the Confederated Tribes for development applications in the Estuary area.

CTCLUSI Culture and Natural Resource Director Margaret Corvi presented a history, their mission to protect and perpetuate their identity, and stated the TCP was a way to recognize their mission. The criteria to justify the nomination included contributing features, referenced important people in history, and potential for learning more about Coos culture and history through distinct sites. Ms. Corvi also outlined non-contributing items such as residential buildings, yards, and commercial buildings were excluded from the nomination. The TCP was an accumulation of research and interviews, was not about owning land, but the Tribe wanting to preserve the resources that support their culture and way of life. Tribal Councilor Barrett stated there were many gathering areas on the beaches and places where triangle grass, used in baskets and trade, was found which was disappearing making it harder to harvest.

Ms. Corvi stated the TCP included 158 undisclosed historical contributing features, not necessarily sites or locations; some may be on private land. If they are archaeological sites, they were protected under state law. The natural features, such as gathering areas, were on Federal, State, and local government lands, not private lands. Mr. Pouley stated the sites were redacted per applicant request, but for archaeological sites there was a state statute prohibiting the dissemination of the site locations. These sites were protected regardless of the TCP. If any private landowner wanted to know if there was a recorded archaeological site on their property they may contact Mr. Pouley. Mayor Benetti stated he thought one of the reasons for the TCP was protection of archaeological sites, but they were already protected by State and/or Federal rules and regulations. Ms. Corvi stated it would be best answered by

their legal council as they were the experts, but the TCP was more wholistic looking at features contributing to rather than just looking at archaeological sites individually; it wasn't just a natural resource value, but a cultural resource value. Tribal Council Slyter stated part of this was to start a conversation, open communication, and for protection.

Councilor Farmer stated the TCP expands into cultural, which could be subjective, and asked how this applied to land or areas since a building or structure may not be old; however, the land beneath was old. Mr. Johnson stated the National Register was associated with historical stuff and a register of physical items, sites, and areas. The nomination was the underlying idea that relates these items. Mr. Farmer asked as more culture would be unearthed, emerged, and was learned would additional sites learned about inherently become accepted by the TCP or would it require a new application. Mr. Johnson stated the TCP was a set thing, if something was found later there was a process to add, a like item does not have as an involved process as the original nomination to add; however, modifications may need a new application and process.

**2) Hear from the State Office of Historic Preservation Office (SHPO) on the process to establish a TCP formation and the federal and state framework for the TCP.** The SHPHO web site noted *"The National Register of Historic Places is the United States' official list of buildings, districts, structures, sites, and objects important to local, state, or national history. The program is run by the National Park Service and administered locally by the Oregon State Historic Preservation Office, an office of the Oregon State Parks and Recreation Department (OPRD). . . A Traditional Cultural Property (TCP) recognizes the cultural significance and identity of a living community. . . The proposed Q'alya ta Kukwis shichdii me Traditional Cultural Property Historic District is a 20-square mile area that follows the general horseshoe shape of the Coos Bay Estuary. The proposed district includes portions of the cities of Coos Bay and North Bend and Coos County. It contains 158 historic "contributing" properties associated with the history, culture, and beliefs of the Coos people, including two buildings and 156 places, or "sites.""*

SHPO Associate Deputy State Historic Preservation Officer Ian Johnson stated they were the local administrators of the National Register, a Federal program under Oregon Parks and Recreation Department. The National Register was the United State's official list of historic districts, sites, buildings, structures, and objects deemed worthy of preservation for their historical significance. SHPO National Register Program Coordinator Robert Olguin noted key dates in the nomination process: February 19, 2019 Coos Bay Design Assistance Team (DAT) provided a recommendation regarding the authorization of the TCP; February 22, 2019 the State Advisory Committee on Historic Preservation (SACHP) would review the nomination document for the proposed TCP; May 10, 2019 requested last day to submit notarized objections to SHPO, any notarized objections received after this date would be forwarded to the National Park Service (NPS) before they make a final decision; May 23, 2019 nomination for the proposed TCP would be forwarded by SHPO to the National Park Service for a final decision, the date would change if the SACHP did not recommend the district be listed in the National Register at the February 22, 2019 meeting; and July 2019 was the expected date the National Park Service would make a final decision regarding the TCP barring an objection by the SACHP. Mr. Olguin stated comments and objections could be made by a chief elected official or certified local government for any reason. Mr. Johnson stated the City's Landmarks Commission, bound by criteria listings, could support, support with comments, or object on the basis they did not believe the nomination was adequate. The

Mayor and City Council may comment, but are not bound by the criteria, and could comment on anything they found relevant. If an independent, clearly stated objection was received in writing by both the chief elected official and certified local government the process would halt; however, anyone could object to an objection and the timeline would restart. SHPO Assistant State Archaeologist John Pouley stated recorded archaeological sites were protected whether on private land or not; if a known archaeological site, a special application for permit was required for any work done. The process was not designed to stop a project, but to make it more thoughtful.

**3) Discuss the potential impact on land development applications for City property owners should a TCP be authorized.** Department of Land Development and Conservation (DLCD) National Resource Specialist Amanda Punton stated they regulated the State of Oregon's land use program. Ms. Punton reviewed the Statewide Planning Goal 5, "Natural Resources, Scenic, and Historic Areas, and Open Spaces" and the procedures covered in Oregon Revised Statutes (ORS) 660-023-0200. ORS 660-023-0200 Section 8a noted a local government must protect National Register Resources, regardless of whether the resources were designated in the local plan or land use regulations by review of demolition or relocation that includes, at minimum, a public hearing process that results in approval, approval with conditions, or denial and considers the following factors: condition, historic integrity, age, historic significance, value to the community, economic consequences, design or construction rarity, and consistency with and consideration of other policy objectives in the acknowledged comprehensive plan. Local jurisdictions may exclude accessory structures and non-contributing resources within a National Register nomination.

Community Development Administrator Carolyn Johnson stated currently most land development applications were subject to a Type I staff review process where a decision was reached by staff within twenty-one (21) calendar days after an application was determined complete and an applicant had seven (7) days to appeal the decision. Other applications required a Type II staff review with notification to surrounding property owners for a twenty (20) day period. Staff then takes action on the application, notifies surrounding property owners of the decision, and if no appeal is made after fifteen (15) days the decision is final. Development applications in a TCP area would require notification to the Confederated Tribes and SHPO. Further assessment of the City's regulations and if/how land use development applications could be impacted was needed, as it was unclear as to the potential impact the TCP requirements had on land use authorization. Under the City's Cultural and Resources regulations it appears, being conservative, a Type III Planning Commission review process would be required with notification to surrounding property owners for a twenty (20) day period prior to a Planning Commission public hearing where staff would present a report, the public would have an opportunity to comment, the Planning Commission would take action with a written decision completed and mailed within seven (7) days of the action, and then a fifteen (15) day appeal period which could go before the City Council or to the Land Use Board of Appeals (LUBA). In Coos Bay the proposed TCP was in the general vicinity of the Coos Bay Estuary and its adjacent uplands. Twenty-one (21) lots were in the Mixed-Use area from Commercial to Anderson and Hwy 101 to 4th street shown on the TCP Historic District map. The TCP area included an estimated three hundred twenty-nine (329) lots. It appeared there were about sixty-eight (68) lots outside the Estuary area, but located inside the proposed TCP.

The City's Cultural Resources Regulations specify "Any property identified as a cultural resource shall not be developed, altered, remodeled, relocated or demolished if the activity

will detrimentally affect the significance of the resource.” A “cultural resource” is defined as “any structure, natural feature, site or area listed in the state of Oregon Inventory of Historic Sites and Buildings or any archaeological site.” The City’s regulations state “the planning commission shall approve, conditionally approve, or deny an application after adopting findings of fact based on substantial evidence in the record.” City regulations also state “if an archaeological site will be disturbed, proof must be available that the Coos, Siuslaw and Lower Umpqua Tribal Council and the State of Historic Preservation Office have been notified and given the opportunity to respond.”

The TCP application appeared clear that the purpose of the Historic District would be to protect resources within the TCP proposed boundaries. These resources are indicated in the TCP application as being located throughout the TCP boundaries. It follows that excavation of site within the TCP boundary could create a disturbance to a resource thus, triggering a requirement for any application requiring excavation to go through a Planning Commission public hearing.

ORS 660-023-0200 defines “demolition” as “any act that destroys, removes, or relocates, in whole or part, a significant historic resource such that its historic, cultural, or architectural character and significance is lost. This definition applies directly to local land use decisions regarding a National Register Resource. This definition applies directly to other local land use decisions regarding a historic resource unless the local comprehensive plan or land use regulations contain a different definition.” It appeared the requirements of ORS 660-023-0200 would prevail regardless of the City’s regulations. Should the TCP be authorized by the NPS, the TCP would be added to the National Register Resources list; thus, triggering the public hearing process noted in ORS 660-023-0200 Section 8a. Ms. Punton stated the Goal 5 rule did not require a change in local code or the process plan, it was the City’s choice if they wanted to change their code, the Tribe just wanted to be notified of possible natural resources. Mr. Pouley stated there were also modest grants available to cover planning cost fees for the additional costs from a regular land use permit application.

Councilor Matthews asked if a property owner in this area was to do a project, such as putting in stairs, what the process would be as there is the potential for excavation. Ms. Johnson stated it would depend on how conservative the City wanted to be with their application review; there could be the potential a resource would be disturbed, demolished and/or relocated and need a public hearing. Ms. Corvi stated on archaeological sites SHPO has a permit process for excavation, but they are not specifically concerned about dirt. Mr. Pouley stated he would want to be contacted and would help a property owner through the process. Councilor Matthews asked additionally if a culturally significant tree had become a hazard to a structure, requested to be removed but denied, would there be a responsibility by any historical organization to mitigate any potential damage. Mr. Johnson stated it was a local issue and the City would set up a process which could include an appeal process.

**Comments about the TCP have been expressed by DAT, who serve as the City’s Landmark Commission:**

*a) The span of the boundary extends well into developed areas of the Downtown and Empire. What would this mean? In the downtown area, it could be that the original high-water line of the estuary is now filled over with development. It appeared the proposed maps are from the original estuary lines, that were filled decades ago and are now fully developed.*

*b) What affect does this designation have on developed property that may be proposing expansion or revisions?*

*c) The map on the SHPO web site appeared different than the map in the TCP application packet.*

*d) The North Spit was filled in after the jetties were installed, this has affected water flow and how sediment settled in 1859 and 1862. This property also appears to be included in the TCP.*

*e) The DAT was concerned about the effect of the TCP on property owners, if it is approved it could mean an added layer to an existing review process. What the TCP means for property owners is unclear.*

The Landmark Commission reviewed the information in the nomination on February 19, 2019, and expressed general support of the TCP, but only if there was no new layer of regulations, any extended processing time, or increased cost to applicants or City.

#### **4) Potential impact on property values, the City's General Fund, and modification to City Regulations.**

Property value: City staff communicated with the appraisal office of the Coos County Assessor. It was pointed out that if property inclusion in the TCP was determined to be non-developable through the required assessment by the Confederated Tribes; the property value would be diminished. Consequently, property taxes could also be affected and impact revenue to the City. Staff would seek additional information from the Assessor's office.

Staffing levels and general fund support: Land use project processing requirements would possibly need to be expanded and require more staff time were the TCP approved. Currently the City has two professional planners on staff to accommodate development applications with the current land use processing procedures. The impact to the current work load could increase were the TCP be authorized as Planning Commission review of projects is much more time consuming than the staff level processing currently required for areas in the proposed TCP. The City's General fund, already slim, currently supplements planning fees to cover planning staff costs. It is unclear the amount of additional funding that would be required to accommodate additional staff possibly required with a change in land use application processing.

Change in Land Use regulations: The City's land use regulations would require modification to add the TCP boundaries into the City regulations outside the Estuary area. The City would seek direction from DLCD as to whether funding for land use regulation amendments could be provided and whether such amendments would include an Oregon Notice to Landowners about Land Use Law Changes Act (Measure 56) notice requirement.

#### **Mayor Benetti opened the public hearing.**

Dick Leshley, Coos Bay asked for clarification on resources as he believed viewscapes should be a cultural resource so as to not destroy or block a view, how would it impact future development if the viewcape was destroyed, and could it be regulated under the TCP. Ms.

Corvi stated it was complicated, may need to explain more clearly what is included in the TCP, and the Tribe would come back with a response at a later time.

Janice Langlinais, Coos Bay asked if something precipitated the TCP, why it came forth when there were established protection regulations already, was something ruined or built on something of significance. Tribal Councilor Slyter stated the Tribe was just trying to protect their culture as the lands looked different now than they previously had and stated much of the land is either Tribal, City, State, or Federal land they want to protect, not private properties.

Elizabeth Kinzie, Coos Bay asked about privately owned bay front property into the bay and riparian rights. Ms. Corvi stated it was already protected and had regulations, the Tribe would not own the property.

Kortney Johnson, Johnson Rock Products, Coos Bay asked what additional steps, time, and/or processes in the new overlay for simple excavations, not archaeological or other resource site, would be required for customers or on their behalf. City Manager Rodger Craddock stated the property owner would need to find out if the property was listed as an archaeological site or other resource located on the site and consult with the tribe, it would be a new step that would have to occur. Mr. Pouley stated to contact SHPO to find out if it was an archaeological site as the registry was confidential due to issues with theft and looting. Ms. Johnson stated the City would want to be conservative to make sure an archaeological resource was not impacted, a Type III application review was the most conservative approach, and would want to make sure the process was correct so any decision made was not challenged. Regardless of type of review, there would be an extra step in the process. Ms. Punton stated if the City changed its code there was also a chance of an appeal questioning the local interpretation of the state law. Ms. Johnson stated if a site was not in the estuary area, an archaeological site, or cultural resource, SHPO was not currently contacted, but in the TCP overlay the Tribe and/or SHPO would be contacted. Ms. Corvi stated the Tribe could do a memorandum of understanding (MOU) with the City for turn-around time of permits being reviewed and stated if oversight of work was needed it was done for free by the Tribe.

Hailey Sheldon, Coos Bay asked if the 158 cultural sites were already listed on SHPO list. Ms. Corvi stated they were both sites already listed and additional sites, but were not just physical site locations, some were features. Ms. Sheldon asked if personal property owners could potentially have property become an archaeological site and would not know unless they contacted SHPO. Ms. Corvi stated some sites were not known archaeological sites, but were village sites that have not been confirmed. Mr. Pouley stated the TCP would not change the list of archaeological sites or the process for them. Mayor Benetti stated cultural sites would be impacted for land use, but to what extent the City did not know.

Tom Burdett, North Bend wanted to know who he could contact to find out if his property was an archaeological site and what the cost was. Mr. Pouley stated to contact him at SHPO, it was free, or contact the Tribe.

Teresa Rigg, Coos Bay asked about the shipping channel. Councilor Marler stated that went through and was maintained by the United States Army Core of Engineers. Ms. Rigg asked the Tribe to add to the definition of demolition, noted it was necessary to preserve, but was too confusing currently.

Carlin DeWater, Coos Bay asked why sites were not being disclosed if not archaeological locations, what the harm was, why not let people know to help protect. Ms. Corvi stated the Tribe knew if it could be harmed or potential for damage, may be associated with another archaeological site and not located or registered yet. Over the passage of time the Tribe had grown used to being guarded, and stated it was an important conversation with the community. Mr. Water stated he didn't feel like it was starting a conversation when locations were not being disclosed.

Will Wright, Coos Bay stated bay front real estate would be affected if buyer could not find out from SHPO (will only notify the owner of property) regarding the site, seller may or may not know, value would be affected, and if something was found during excavation by a buyer, permitting would be required for additional costs. Real Estate Agent Brooke Yussim stated if the seller did not know it would not be disclosed and if the TCP goes through Real Estate agents would have to require the seller to find out if in their property was in the overlay.

A Coos Bay citizen stated the postcards received by those in the overlay did not have much information on them and the information on the process to opt for or against was hard to find and understand. Mr. Johnson stated the postcards were their responsibility, not the Tribe, information was posted on their website, individuals would have until July 2019 at earliest to put in a request for information and submit objections or comments.

Brooke Yussim, Real Estate Agent, Coos Bay stated agents were liable for anything known or should have been known about a property selling or buying, wanted more transparency in the process, and asked how that could be done. Ms. Johnson stated the seller would need to contact SHPO, the City required the Tribe and SHPO to be notified for any property in the TCP. Maps identifying City of Coos Bay locations that would be in proposed district where posted on the City's website.

Mike Vaughan, Coos Bay asked what the function of the Historical Landmark Commission was, who it was under, and what their influence was. Mr. Craddock stated it was the same as the Design Assistance Team (DAT), the City was required to have as a certified local government. Mayor Benetti stated they made an independent decision/comment regarding the TCP. Mr. Johnson stated the Landmark Commission is considered the local expert on resources.

Kara Lincoln, Coos Bay stated she respected the Tribe for using the term culture and hoped they would further explain the terminology of culture.

Mayor Benetti restated the Landmark Commission had reviewed the nomination and expressed general support of the TCP, but only if there was no new layer of regulations, any extended processing time, or increased cost to applicants or City.

Mayor Benetti asked who was in favor of the TCP. Teresa Rigg, Coos Bay stated she was in favor of the TCP, she knew of the sites and history when she was little, but the history had been dug up and lost.

Mayor Benetti asked who was against the TCP. Rick Skinner, Coos Bay stated as a representative of corporate properties within the TCP, he had a lot of concerns, he objected to the TCP, would be opting out, and hoped the Landmark Commission did as well.

Nathan Clausen, North Bend stated he owned a developed designated cultural site, had the Tribe investigate an area of concern, did not have a good experience, and could not build a fence or take down a hazardous culturally sensitive tree. Todd Goergen, Coos Bay stated he went to the North Bend public information meeting in January 2019, the Tribal legal council was there, had a helpful question and answer session, legal council mentioned there were impacts they would be concerned with regarding the aesthetic view along watershed. Mr. Goergen was concerned about those unknowns and one of the intangibles were additions on properties that blocked the view.

Mayor Benetti closed the public hearing.

### **City Manager's Report**

No comments were made.

### **Council Comments**

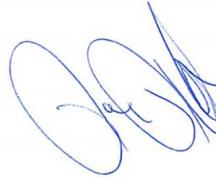
Tribal Councilor Slyter thanked everyone for their time, taking the first step in a conversation, stated it was a learning process for everyone, and hoped people may have gotten other information outside of the TCP. Tribal Councilor Barrett thanked everyone, stated they would answer any questions people had after the meeting, and could give examples of situations that have happened in the past. Councilor Miles stated the Council tried to be very thoughtful in their decision-making and was personally leaving the meeting with more questions than he came in with, could not make a decision, and asked for an extension in the process. Most concerning was private landowners weren't going to be told whether they have historic spots on their property and the City didn't know if they had to change the codes or not. Councilor Matthews stated he needed more information, had substantial questions that pertained to any decision made, and requested a delay. Councilor Farmer agreed with a delay, wasn't ideologically opposed to the idea of the TCP, could see the benefits for the 158 recognized sites, understood land could be exploited if other site locations released, but landowners didn't have access to that information, recognized it simplified the process for the Tribes, not intent by the Council or representatives of the Tribes to impede in the process, but didn't know who came next, needed to be better aware the entire sense of where and size of locations to help make a decision, and requested a stay until further information. Councilor Kilmer thanked the Tribal Council for being at the meeting and providing information upfront, thanked the state representatives and public for attending, had questions and concerns for the impact on citizens who owned property in the district, what impact it would have financially on projects in the City, and needed more time for additional information. Councilor Marler thanked everyone for being at the meeting and offering their comments, thanked the Tribe for being at the meeting and valued them in the community, wanted to be as respectful as possible, concerned how it affected the landowners, how it would affect the City in the process, and asked SHPO if the City could request more time to discuss. Mr. Johnson stated the timeline was set by Federal rule, they could make recommendations, but if the TCP met guidelines it would move forward unless the application was withdrawn or if Landmark Commission raised an issue with documentation.

Mayor Benetti asked how SHPO took the comment by the Coos Bay Landmark Commission. Mr. Johnson stated the first half of their comment was taken as generally supportive, the second half regarding the land use question was out of the purview of the committee and process; would be part of public record and acknowledged, but was not part

of consideration. The Landmark Commission could still reverse their direction; take the comments made, review, clarify their comments (substantive findings based on criteria) in response, and resubmit their finding. Mayor Benetti thanked everyone for attending and giving their input; Council was trying to understand how it impacted and affected the citizens, City, and Tribe; Council had only a short period of time to review, upon hearing the comments: needing clarification, trying to comprehend what's going, what additionally was going to be needed, it's confusing and unknown; the Council needed an extension, and asked the Tribe for some additional clarifying information. Ms. Corvi stated the tribe could do a Frequently Asked Questions (FAQ). Mayor Benetti stated there additionally was a need for clarification on the extra City processes and the impact of those processes, requested to put on an agenda for more discussion, and to have the Landmark Commission to respond with a more definitive comment.

### **Adjourn**

There being no further business to come before the Council, Mayor Benetti adjourned the meeting. The next regular Council meeting was scheduled for March 5, 2019 in the Council Chambers at City Hall.



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Joe Benetti, Mayor

Attest: Nichole Rutherford  
Nichole Rutherford, City Recorder