

Harms, Tammie

From: Johnson, Shannon
Sent: Friday, April 28, 2023 1:32 PM
To: Cathy Clark; Shaney Starr; Laura Reid; Daniel Kohler; Kyle Juran; Soraida Cross; Robert Husseman
Cc: Brown, Adam; Wood, Tim; Harms, Tammie
Subject: Walk on item for May 1 meeting
Attachments: Keizer talking notes.docx

AmicusId: 93941
AmicusStatus: Saved
AmicusFileName: Civil Forfeiture
AmicusFilelds: 20

Mayor Clark and Councilors:

I will have a walk-on item for the May 1 meeting. At issue is the question of joining an *amicus curiae* (friend of the court) brief in the Oregon Supreme Court. It involves a civil forfeiture case recently decided by the Oregon Court of Appeals. Every colleague who has reviewed the case believes it was wrongly decided. I asked the attorney involved to give me some talking points on this and they are attached. His law firm represents Keizer in the current civil forfeiture cases involving the large scale illegal marijuana grow houses.

We anticipate that there will be at least one or two more cities joining the brief. The total estimated cost is \$5000 which would be shared between the cities joining.

I recommend the Council approve this action and will have a Resolution to that effect at the meeting on Monday. Please let me know if you have any questions. Thanks.

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Talking Points:

- On March 8, 2023, the Oregon Court of Appeals issued a ruling on a civil forfeiture case, *Yamhill v. Real Property*, 324 Or App 412 (2023). This case spontaneously announced that civil forfeitures are "criminal in nature" and, therefore, implicate the Double Jeopardy concerns.
- The Keizer Police Department has a civil forfeiture program, in which the police department seizes the unlawful proceeds and instrumentalities of prohibited conduct, primarily, the unlawful delivery and manufacture of narcotics.
- The Court of Appeals decision left open questions of interpretation, that, if unresolved, could significantly hinder or prevent the Keizer Police Department from continuing its civil forfeiture program. The avenue the Court seems to have left open for now is consolidating civil forfeiture cases with criminal proceedings, but this is not how it has ever been done and comes with numerous additional issues. (e.g. what if the individual is not charged, but we could still prove our civil case?; what about when there are multiple claimants to the same property? Does "criminal in nature" mean they are entitled to an attorney? etc.)
- The City of Keizer has pending civil forfeiture litigation, which has been directly, and negatively, impacted by this Court of Appeals decision. A civil forfeiture program would be the only opportunity for the Keizer Police Department to seize the unlawful proceeds and instrumentalities of drug crimes.
- There are other jurisdictions that have been similarly impacted, and also desire to petition for amicus, including the City of Medford and the City of Salem. We understand that the League of Oregon Cities is considering separately filing an amicus brief as well. The City of Keizer would benefit from filing an amicus petition with these (and other) cities, to raise collective issues of concern to the Oregon Supreme Court about the negative impact of the ruling in *Yamhill v. Real Property*.

1 CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

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3 Resolution R2023-_____
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5 DIRECTING CITY ATTORNEY TO TAKE ACTION TO HAVE
6 CITY OF KEIZER JOIN IN AN AMICUS BRIEF IN *YAMHILL*
7 *COUNTY V REAL PROPERTY COMMONLY KNOWN AS: 11475*
8 *NW PIKE ROAD, ET AL* CASE
9

10 WHEREAS, state law provides for civil forfeiture proceedings to allow forfeiture

11 of proceeds and instrumentalities of illegal activity to state and local government;

12 WHEREAS, such proceedings are a useful method that fairly forfeits such
13 proceeds and instrumentalities that were illegally acquired or used;

14 WHEREAS, the recent Oregon Court of Appeals case known as *Yamhill County*
15 *v. Real Property Commonly Known as: 11475 NW Pike Road, et al* and *Sheryl Lynn*
16 *Sublet*, Claimant, determines that the use of civil forfeiture proceedings constitutes
17 double jeopardy under the federal constitution and prohibited its use;

18 WHEREAS, this decision is inappropriate and is counter to previous court
19 decisions;

20 WHEREAS, the City Council finds it necessary and appropriate to have the City
21 of Keizer join a friend of the court or *amicus curiae* brief urging the Oregon Supreme
22 Court to reverse this decision;

23 NOW, THEREFORE,
24
25

1 BE IT RESOLVED by the City Council of the City of Keizer that the City
2 Attorney is directed to take appropriate action to have the City of Keizer join in an
3 amicus brief on the side of Yamhill County in the case noted above.

4 BE IT FURTHER RESOLVED that funding for outside counsel will be paid from
5 the Administrative Services – City Attorney line item.

6 BE IT FURTHER RESOLVED that this Resolution shall take effect immediately
7 upon the date of its passage.

8 PASSED this _____ day of _____, 2023.

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10 SIGNED this _____ day of _____, 2023.

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Mayor

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City Recorder

Input from WKNA residents re: Flashing Speed Limits signs

Background: The issue of speeding on Shoreline Drive was identified through an extensive outreach program conducted by the WKNA in January and February of 2022. It was one year ago this April that the WKNA started the process through the Public Works department after testifying at many TBSP committee meetings to address speeding on Shoreline Drive. After the completion of traffic studies and testimony at the September 6th City Council meeting by the WKNA members, the 'Council agreed by consensus that they supported the purchase and placement of portable speed monitoring flashing signs on Shoreline'. The council asked that the WKNA monitor the effectiveness of the improvements.

The new speed flashing signs were installed at the beginning of 2023. As a follow up to the City Council's request, the WKNA Board of Directors decided to carry out a door to door flyer to request input on the effectiveness of the speed signs. On April 8th, Rhonda Rich, Carolyn Homan and Carol Phipps talked to residents on Shoreline and distributed a letter asking for their input. Residents of 35 houses located north of Rafael St. N. and south of Chemawa Rd. were contacted.

Summary: Thirty five houses on Shoreline Dr. N. were included in the door to door survey. Eleven residents were home and able to give verbal comments. Two residents responded by email. See comments below.

An article in the March 2023 newsletter was sent out to all members asking for input on the "Flashing Speed Sign". One comment was received by email. See comment below.

Members were invited to the April 13th WKNA general meeting to give their input. Twenty two members attended the meeting. Two members expressed their opinion that the signs were effective. General consensus was that the signs are effective in slowing speeds and making drivers more aware of the residential speed limit of 25mph.

Conclusion: After receiving comments from residents on Shoreline Dr. and the consensus at a general meeting, the WKNA concludes that the flashing speed signs are effective in reducing speeds on Shoreline Dr. and potentially on the intersecting streets in the neighborhood. We request that the signs remain in place as a permanent traffic calming device.

The comments from Shoreline residents are as follows:

"What an absolute treasure to have them on Shoreline Dr., especially with the kids walking to Cummings School and having to cross Shoreline. I know the WKNA has been advocating for some sort of traffic control devices for quite some time and the City finally came through!" (By email)

"I appreciate the traffic concerns on Shoreline Dr. N. As drivers are always speeding on this street. I have always felt "Stop" signs should be place on Shoreline Dr. And Dearborn goin North/ South. The traffic speeding alerts are helpful, but don't feel they deter speeding very much." (By email)

"Helps a lot! (verbal comment at 4830)

"Helps, but need stop sign" (verbal comment at 4810)

"Please keep them. Do not put up a stop sign. I am afraid of cars backed up in front of my driveway. Need to catch the kids speeding at night." (verbal comment at 4790)

"Yes, they help out a lot." (verbal comment at 4660)

"Keep them. They do help slow down speeding." (verbal comment at 4620)

"Yes, keep them" (verbal comment at 4640)

"I really do love them. Please keep them up." (verbal comments at 4705)

Thinks the signs have helped slow traffic but would like to see police presence to reinforce it. He thinks people slow but then speed up. Also sees it as a "reminder" for drivers who tend to obey speed limits. Speeders are going to speed. (verbal comments at 4595)

Postive about the effort to slow traffic. (verbal comments at 4655)

Effective but people still not slowing down. Have police out more. Haven't seen them in a few months. Motorcycle cops have been there. Seen drivers going as fast as 55mph. (verbal comments at 4908)

Walks children to school everyday, Six out of ten people m ay slow down at night, pass the sign, then speed back up. Would like more police presence. (verbal comment at 4898)

Flashing Speed Sign (from March 2023 WKNA newsletter)

Flashing speed limits signs, designed to slow traffic, were installed on Shoreline Drive near the intersection with Dearborn Avenue in January. These signs were the result of West Keizer Neighborhood Association's request for a way to slow traffic near this busy intersection. Some neighbors have already commented that the signs seem effective in slowing traffic. If you have input, WKNA and the City would like to know. Please leave your comments at this email address: info@westkeizerna.org Another traffic calming device – a speed hump or “cushion” – was requested at Cummings Lane and Delight Street as a way to increase safety for children walking to Cummings Elementary School. That project is in the design phase and should be installed later this year, according to the City.

Comment from email notification about the WKNA general meeting:

Unnecessary, one more step toward turning our small community into a large controlled environment. (resident on Rafael St)